United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND APPENDIX

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

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DISTRICT OF COLUMBIA
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GEORGE FREDERICK FRENCH and ROGER FRENCH, *Appellants*,

v.

GEORGE E. COLBY and INTERNATIONAL BRAID COMPANY, *Appellees*.

Appeal from the District Court of the United States for the District of Columbia.

H. C. BIERMAN,
141 Broadway,
New York 6, N. Y.

R. PEALE HERRICK,
Colorado Building,
Washington 5, D. C.
Attorneys for Appellants.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BRIEF FOR APPELLANTS.

JURISDICTIONAL STATEMENT.

This is a suit brought by Appellees in the District Court of the United States for the District of Columbia, under revised statute 4915, 35 U. S. Code 63 (Appellants' App. 2), asking that Appellee Colby be adjudged the first inventor over Appellant George F. French of the subject matter of applications for patent filed by said parties. In the Pat-

ent Office concurrent decisions of the Examiner of Interferences and of the Board of Appeals had awarded priority of invention to Appellant French (Appellants' App. 97-102).

In the present suit a final judgment was rendered without opinion (Appellants' App. 13) by the trial court in favor of Appellee Colby. From this decision Appellants have brought the present appeal.

STATEMENT OF CASE.

Appellants are residents of England and the invention of George F. French was made in England. It was introduced into the United States at a date prior to the earliest date of conception alleged by Appellee Colby. The trial court in his findings so held, but nevertheless awarded priority of invention to Colby.

INVENTION IN ISSUE.

The invention is related to ladder web (French Exh. 1) for venetian blinds, the web consisting of two vertical outer bands having cross-straps therein on which the slats of a venetian blind may rest. Prior to the present invention, it had been customary to make the two outer bands of two different colors for decorative purposes and, as a result, the binding-in areas of the cross-straps into the outer bands showed specks or blemishes on the outside of the bands (Colby Exh. 5).

The present invention overcomes the defect and accomplishes it by making the warp threads of the cross-straps of two colors, each alternate thread being of the color of one of the outer bands and the other alternate threads being of the other outer band. The binding-in of the cross-strap warp threads is such as to bind in only the corresponding color in each of the bands.

All these structural features are readily visible by merely a casual inspection of the ladder web in issue, and, in accordance with well established practice the invention is con-

sidered to be of the simple character which is understandable by a mere inspection.

INVENTION IS SIMPLE.

The invention is of the simple type where the mere production thereof constitutes a reduction to practice. One may even, without having any knowledge of the field of ladder web, inspect the invention as set forth for instance in French Exhibit 1, and compare the same with the counts involved in the present suit and be able to readily see and comprehend the construction. For instance, Count 1 reads as follows:

> "An integrally woven ladder construction consisting of two main webs having exterior faces of differing color characteristics, connected at their interior faces by cross tapes having color characteristics which include the color characteristics of both of the outer webs as a result of the cross tapes being constructed of wefts and of warps part of which possess the color characteristics of one main web and which are interwoven into only that main web, and the other part of which possess the color characteristic of the opposite main web and which are interwoven into only said opposite main web, while the warps which possess the unlike color characteristics of the main web extend over and adjacent to the inner surface of that main web, whereby each main tape is free on its exterior surface from the color characteristic of the opposite main web."

Comparing this with French Exhibit 1, it is quite easy to see that said exhibit has all of the elements of the count. There is present the two main webs, one of red and the other of gray which, of course, have exterior faces of differing color characteristics. By noting the inside of the web, it will be seen that the two main webs are connected at their interior faces by cross tapes regularly spaced. These tapes have color characteristics of both of the outer webs, namely, having both red and gray threads.

It can also be readily seen that of the two colors of threads in the cross tapes, only that color which corresponds to the color of the main web to which it is attached, is woven into the same. In other words, the red threads of the cross tapes are woven into the red main web, while the grey threads are woven into the grey main web. Also, the opposite color lies on the inner surface of the main web, as for instance, the grey threads will lie on the inner surface of the red main web.

The final limitation of Count 1 is to the effect that each main web is on its exterior surface free from the color of the opposite main web. For example, the exterior surface of the red main web is free from any specks of the grey threads of the cross tapes.

POINTS RELIED UPON.

Appellants consider that Judge Davies, who decided the case in the District Court, was in error in several respects, and Appellants will rely upon the following points in the present appeal.

1. The District Court erred in not holding that George F. French made the invention in issue and reduced the same to practice in England prior to January 1939.

2. The District Court erred in not holding that Appellants have proven at least a conception of the invention by introduction thereof in the United States during the first week of February 1939.

3. The District Court erred in not holding that the receipt of an embodiment of the invention in this country and the disclosure thereby to Harris and Miss Donovan in February 1939 constituted a reduction to practice of the invention in this country.

4. The District Court erred in not holding that the disclosure of the invention to Gibbons by Harris on Feb. 28 or March 1, 1939 constituted a reduction to practice of the invention in this country.

5. The District Court erred in not holding that Gibbons reproduced the invention not later than March 10, 1939, and also not later than March 16, 1939, and that these embodiments constituted additional reductions to practice.

6. The District Court erred in not holding that immediately upon the disclosure of the invention to Gibbons he took all possible steps to change the production of the mill so as to embody the invention in issue.

7. The District Court erred in not holding that Appellants were diligent from the date of introduction of the invention into this country of June 26, 1939, the filing date of the application of French involved herein.

8. The District Court erred in not holding that French's British application corresponding to the United States application, and filed in Great Britain on April 6, 1939, was a constructive reduction to practice of the invention in this country.

9. The District Court erred in holding that Colby conceived the invention on March 6, 1939.

THE FIRST INVENTOR OF THE SUBJECT MATTER.

George F. French has testified (Appellants' App. 86) that he conceived the subject matter in December, 1937 and he disclosed it in detail to his son, Roger French, in January, 1938. The conception and disclosure took place in England, and the disclosure was quite in detail, as testified to by both George F. French and Roger French (Appellants' App. 87-88 and 77).

The invention was further explained by George F. French to Spencer Broughton in England who, with the assistance of others, made and fully tested ladder web in April, 1938 (Appellants' App. 91-92). The testimony to this effect is clear and conclusive by the three witnesses, George F. French, Roger French, and Spencer Broughton. Their testimony is accompanied by specimens (French

Exhs. 1A, 1B and 1C) showing that the ladder web produced in April, 1938 conforms with the issues of the present suit.

Not only did French in England manufacture the new ladder web, but it was tested and found satisfactory there. This testimony was given by Roger French, George F. French and Broughton (Appellants' App. 79, 87 and 91). All of these witnesses testified that the tests of the new ladder web were satisfactory. There was no cross examination on this point of these witnesses and it must be taken as conclusive that French produced the ladder web in England in 1938 and reduced it to practice at that time.

INTRODUCTION OF FRENCH'S INVENTION INTO THE UNITED STATES.

On January 27, 1939, Roger French sent a letter (French Exh. 14 and 14A) bearing that date (Appellants' App. 79) to the United States, to the attention of John D. Harris, the letter bearing No. 600 in the series of correspondence between the parties. Attached to the letter was a sample of the ladder web here in issue (French Exh. 1 and 25) and both were mailed on or about January 27, 1939.

The letter (French Exhibit 14) and the sample (French Exhibit 1) were both received by Harris and his secretary, Miss Theresa Donovan, in the first week of February, 1939 (Appellants' App. 45 and 72) at New York City where the office of Thomas French & Sons, Ltd., a corporation of the state of New York, was located.

All of the novel features of the invention were readily visible to both Harris and Miss Donovan, and both having been accustomed to handling ladder web for a number of years, instantly appreciated the differences between the new and the old. In fact, Miss Donovan in giving her testimony, picked out this sample from among a large number which were on the desk before her when she was testifying (Applicants' App. 72). This shows that she recognized the invention in issue and had no difficulty in distinguishing it from other ladder webs.

Harris, of course, understood it fully, as this was exactly what he had been asking for previously, and now when he obtained it he certainly knew what it looked like. It is emphasized that the invention is not in the method of making the article in question. Had that been in issue then neither Harris nor Miss Donovan would be qualified to understand the same. Since the invention is not the method of production but is in the article itself, a mere inspection of the article is all that is necessary to understand the details of construction, namely, the two color strap warps and the binding-in so that the opposite color does not show on the outside of the bands. It is quite obvious that both Harris and Miss Donovan understood the invention and the receipt by them of the sample constitutes a full disclosure in this country and a reduction to practice.

The letter (French Exhibit 14) by itself, even without the sample, clearly indicates to such persons as Harris and Miss Donovan what the construction of the sample is, for it states that

> "the cross tape is in both colors of which only the appropriate one is bound into each body, the strength of binding is not quite as much as before, but quite adequate". (Appellants' App. 94-95)

Therefore, even if only the letter had come to this country, it would have been a disclosure of the invention here. Since both letter and sample arrived, they conclusively show the reduction to practice in the United States.

Therefore, the receipt of French Exhibits 1 and 14 in this country, in the first week of February, 1939, constitutes a disclosure here and a reduction to practice here. Both tribunals of the Patent Office decided that the receipt of these Exhibits in this country was introduction into the United States. The Board of Appeals gave the date as the first week of February, 1939 and the Examiner of Interferences, being more cautious, gave the date as being *not later than* March 5, 1939 (Appellants' App. 100-101). Both dates are ahead of Colby's alleged date of conception.

FURTHER ACTIVITIES ON BEHALF OF APPELLANTS.

It was Harris' intention, immediately upon the receipt of this sample, to bring it to the mill of Thomas French & Sons, Ltd., the mill being located at Fall River, Massachusetts. At the mill there was Edwin J. Gibbons, mill manager, who understood not only the structure of the invention in issue but also the method whereby it might be produced.

However, Harris had an accident on February 8, 1939 which placed him in bed with broken ribs until February 24, 1939 (Appellants' App. 41-42, 46, 100). He returned to his office on that date and on February 27, 1939, he planned to go to Fall River and had Miss Donovan prepare a memorandum of the matters to be discussed with Gibbons there, the memorandum being French Exhibit 15 (Appellants' App. 46 and 73). An inspection shows that one of the matters to be discussed was the new ladder web sent from England, stating as follows:

> "TU-TONE TAPE—Manchester has made a sample eliminating specks in Mingled."

Harris testified that he disclosed the invention to Gibbons at Fall River either on February 28 or March 1, 1939 depending on whether he left for Fall River by train or auto (Appellants' App. 46). This is corroborated by Gibbons who said that the sample (French Exhibit 1) was given to him by Harris in the first two or three days of March, 1939 (Appellants' App. 14). Harris' recollection of the date was better because it was fortified by the memorandum (French Exhibit 15). Gibbons fully appreciated the invention by a simple inspection thereof and he even testified that he would have understood a description over the telephone just as well (Appellants' App. 26).

Harris returned to New York shortly after the disclosure and took back with him about one-half of the sample (French Exhibit 1 Appellants' App. 43). He also intro-

duced into evidence that piece of ladder web which he had taken back to New York with him, it being in evidence as French Exhibit 25. Gibbons in his testimony (Appellants' App. 26) also stated that Harris had part of the sample with him because Gibbons later saw that sample in the New York office, as follows in cross-examination:

> "Q. Did he have another piece of it that he (Harris) took away with him? A. I couldn't say, but I think so. Yes, I know he did, because I think I saw that piece at one time. I saw that in New York, and at a time when this (French Exh. 1) was still in Fall River."

On March 6, 1939, at 8 P. M. from New York City (Appellants' App. 52) Harris left for a trip to the Middle West and his intinerary was typed two days before (Appellants' App. 65) by Miss Donovan (Appellants' App. 53). This is in evidence as French Exhibit 20 and shows quite clearly that Harris intended to visit Bostwick-Goodell Company, at Norwalk, Ohio, on the next day. Harris himself typed an outline of three matters which he was to discuss with Bostwick-Goodell Company (French Exhibit 21). He arrived there on March 7, at about 1:30 P. M., and discussed the three matters with Goodell, one of the matters being, as shown in Exhibit 21, the new ladder web involved in the present suit, as follows:

> "BOSTWICK: IWG re Tu-Tone. Show new idea so that cross strap threads do not show through. This is new, may interest them".

As further evidence that he did discuss with, and disclose French Exhibit 25 to Goodell, is seen from the letter Harris wrote on March 7, 1939 (French Exhibit 13) to Gibbons and which was duly received by the latter. This is a contemporary document which conclusively proves the disclosure of the sample to Goodell on that date, and it says in part:

> "Bostwick likes the idea of the mottled cross straps so that the binding does not show on the outer tape, this is like the sample England made up".

The fact that Harris left on his trip from New York on March 6th shows that he was at Fall River, Mass., not later than March 4th. This contrasts with appellees' *alleged* date of conception of March 7th.

Gibbons began work on the reproduction of French Exhibit 1 as soon as he received it. Before March 10, 1939 (Appellants' App. 18) he had produced at least one embodiment of the invention in issue (French Exhibit 3) and he had produced a chain draft thereafter which is dated March 10, 1939 (French Exhibit 2). His work continued and before March 16, 1939 he had produced another chain draft and samples of a different pattern, called Dekratape, of the invention in issue (French Exhibits 10, 11 and 12). All of these were reductions to practice. The evidence further shows that activities were continuous and that commercialization of the invention by offer and sale took place at the same time and there was no lapse in the activity of Harris and Gibbons.

Among such activity was the sending of a sample of the new ladder web made by Gibbons to National Venetian Blind Co. on March 16, 1939 (French Exhibit 16). On March 18, 1939, National Venetian Blind Co. sent a telegram (French Exhibit 17), approving the new construction of the ladder web made in accordance with the invention in issue, and ordering Thos. French & Sons, Ltd. to proceed with supplying them with ladder web of this type. Thereupon the production of the new ladder web was started and continued and expanded as the looms became available for the new construction.

Immediately upon the disclosure to Gibbons of the invention. Harris told him to start production of the new ladder web as quickly as possible. Harris stated on cross-examination as follows:

> "Q. Do you know when the first hidden stitching of the cross straps was put on the market by your American concern? A. It is hard to say, because after this sample came over, I asked Mr. Gibbons to get busy as

> quickly as possible to convert all the newer manufactured Tu-Tone tape with this principle. Of course, it was difficult to do, because we still had unfinished woven ladder web in the looms. Of course, when they ran out, then we would make the looms, or set the looms, in order to manufacture in this manner; but the exact date—as near as possible after the receipt of the samples: that is the best answer I can make to it." (Appellants' App. 63-64)

On March 20, 1939, Harris wrote to Gibbons at the mill, instructing him to "proceed and manufacture" (French Exhibit 9) the new ladder web for National Venetian Blind Co. On March 23, 1939, Harris wrote a letter to England (French Exhibit 18), in which he makes the definite statement that the new ladder web was easily analyzed by Gibbons. On March 30, 1939, a letter was written to Thos. French & Sons, Ltd. of New York by Canadian Ventilating Shades (French Exhibit 19), asking for prices on the new ladder web made in accordance with the invention in issue. On April 6, 1939, French's British application was filed, which constitutes a further reduction to practice.

Summarizing the activities of Appellants, we find that the invention in issue which was a reduction to practice, was received in this country in the first few days of February 1939. It was placed in the hands of Gibbons, the Mill Manager, on February 28 or March 1, 1939. He immediately took steps looking to production, and by March 10, 1939 had reproduced the ladder web in this country. From that time on the invention was commercialized by actual production in the mill, which was changed over to the new web as soon as possible. On the other hand, Colby's earliest asserted date of conception was March 6 or March 7, 1939.

The British application of George F. French, on which the United States application is based, was filed in England on April 6, 1939, as shown by the oath attached to French's original United States application (Colby's Exhibit 50). Under the International Convention this date constitutes

a reduction to practice and it is not necessary to show any activity thereafter.

Therefore, we see that the invention in issue was introduced into this country at the beginning of February, 1939 and was known to at least three persons who understood the invention prior to the earliest date claimed by plaintiffs. Activities on behalf of defendants were continuous and vigorous and there was no intention to abandon the invention. Under these circumstances, it must be held that George F. French conceived the invention, reduced it to practice, and introduced it into the United States prior to any date available to Appellees, and French, therefore, is the prior inventor.

SUMMARY OF ARGUMENT.

1. Three witnesses have testified on behalf of Appellants that the invention was made in England prior to 1939 and was tested satisfactorily there. French Exhibit 14, which is a letter written by Roger French on January 27, 1939, had attached thereto a sample of the invention now in evidence as French Exhibits 1 and 25. This letter was dispatched to the United States and arrived here in the first few days of February 1939. Since the letter contains a clear description of the invention, and a sample was attached thereto, the receipt of these items in the United States constitutes a reduction to practice in the United States on the date of receipt.

2. The invention is of an extremely simple nature and can be readily be comprehended in full by the layman. It is not necessary that one be a weaver to comprehend the nature of the invention. The ladder web attached to French Exhibit 14 was seen by Harris and his Secretary, Miss Donovan in February 1939. Both could by an inspection of the ladder web understand the construction thereof. The principal feature is that the cross tapes be made of threads of two colors, with only the corresponding color being bound into each of the main webs. Any lay person

would readily see and comprehend such a structure. At the taking of testimony, both Harris and Miss Donovan readily picked out French Exhibit 1 from a considerable number of samples of ladder web on the desk before them. Even though neither of them was a skilled weaver and could not possibly reproduce the article, they understood the construction and therefore the disclosure to them at the beginning of February 1939 constituted a conception of the invention in this country and a reduction to practice thereof.

3. Harris had intended immediately to bring the sample (French Exhibit 1) to the mill at Fall River, Mass. and give it to Gibbons, the Mill Manager. He was delayed for about three weeks by reason of a fall which broke several ribs and put him in bed for this period. He returned to the office on February 24, 1939, and on February 27, 1939, prepared a memo, which is French Exhibit 15, one of the items on which was a discussion with Gibbons of the invention in issue. He left the next day, and depending upon whether he went by automobile or railroad, he does not recall which, he showed the invention to Gibbons either on February 28 or March 1, 1939. Gibbons states that this disclosure was made to him in the first two or three days of March 1939. It could not possibly be later than March 4, 1939 because Harris returned to New York with one-half of the sample in his possession. He planned a trip to the Middle West on March 6, 1939 and had an itinerary typed in New York *two days* before March 6th. Therefore, there was a disclosure to Gibbons, who was so highly skilled in the field that he could reproduce the item, and such disclosure came not later than March 4, 1939. This constitutes a reduction to practice as of such date.

4. Gibbons, the Mill Manager, began work immediately on the reproduction of the invention in issue and not later than March 10, 1939 he had made a satisfactory ladder web in accordance with the invention in issue, which is in evi-

dence as French Exhibit 3. This constitutes a still further reduction to practice of the invention.

5. As soon as he had completed the first sample, Gibbons started work on a different pattern of ladder web embodying the invention in issue. His work culminated on or before March 16, 1939 in the production of a ladder web known commercially as Dekratape, having a fancy pattern on one of the main webs. Samples of this embodiment are in evidence as French Exhibits 10, 11 and 12. These exhibits constitute still further reductions to practice of the invention.

6. No further work or any acts of diligence were required of Appellants. Even if the various activities outlined above were not reductions to practice, there was continued activity from the time the invention was received in this country in February 1939. There was every intent on the part of Thomas French & Sons, Ltd. to promptly exploit the invention in this country, and there was no thought of delaying such exploitation, nor of abandoning the invention. The filing date in England of April 6, 1939 under the International Convention, constitutes a reduction to practice in this country of the invention in issue.

7. As soon as Gibbons received the sample sent by England around March 1, 1939, his work was continuous and before the month was gone, he had made various samples of the invention in issue and had actually begun commercial manufacture thereof in the looms at Fall River.

8. The Trial Judge awarded Colby a date of conception of March 6, 1939, which Appellants dispute. A full discussion of the Colby evidence will be made in a reply brief which Appellants expect to file. Even if Colby be accorded this date, there is ample evidence of introduction into this country, disclosure to at least three individuals and continued activity and reductions to practice prior to the best date that Colby may be entitled to.

ARGUMENT AND LAW.

I. Invention Made in a Foreign Country.

A foreign inventor may prove a date of invention prior to his filing date in the United States and prior to his Convention filing date in his own country. It is merely necessary, under the authorities, that he couple the work done in a foreign country with activities in the United States.

In the case of *Electric Storage Battery Co.* v. *Shimadzu*, 307 U. S. 5, there was involved a foreign inventor who had come to this country and had obtained patents on his invention made in the foreign country. The defendant asserted prior use in this country. The question arose as to whether plaintiff would be allowed to prove a date of invention going back of his filing date in the United States. The Supreme Court fully and carefully considered the entire situation, and particularly, Sections 4886 and 4887 of the Revised Statutes on which the filing of applications for patent is based. The Court pointed out the various changes which had been made in the Statutes over a long period of years, and then concluded as follows:

> "* * * Moreover, Sections 4886 and 4887 have repeatedly been amended and other portions of the patent act have been revised and amended from time to time since the decisions pointing out that Section 4886 did not prevent the foreign inventor from carrying back his date of invention beyond the date of his application. Congress has not seen fit to amend the statute in this respect and we must assume that it has been satisfied with, and adopted, the construction given to its enactment by the courts."

The Court stated that there was nothing to prevent a foreign inventor from carrying his date of invention back of his filing date in the United States.

In the case of *Hanifer* v. *Price*, 96 F. 435, it was, in effect, reiterated that a foreign inventor is not limited to his filing date in the United States and that such an inventor could go back to

"the date of disclosure in this country of knowledge of said invention."

II. Mere Making of Simple Device is Reduction to Practice.

The law recognizes that certain inventions of complicated nature require, in order to reduce the same to practice, that certain tests be applied to them in order to determine whether they operate. The law also recognizes that certain inventions are of such simple character that a mere making of a sample or model is sufficient to enable people to understand the same, so that no testing thereof is necessary.

In the case of *Sherman* v. *American Telephone and Telegraph Company,* 49 Pat. Q. 502, 38 F. S. 360, such a situation arose in connection with a suit under R. S. 4915 relating to priority of invention. The Court set forth the tests necessary, in various circumstances, in the following words:

> "And speaking of the requirements of tests in reduction to practice, the author (Walker on Patents, Vol. 1, p. 386), quotes Sydeman v. Thoma, 32 App. D. C. 362. This case divides the decisions on this much-litigated question into three classes. The first includes devices so simple and of such obvious efficacy that construction of one of a size and form intended for, and capable of practical use, is held sufficient without tests in actual use. The second consists of those where a machine embodying every essential element of the invention, having been tested, and its practical utility for the intended purpose demonstrated to reasonable satisfaction, has been held to have been reduced to practice, notwithstanding it may not be a mechanically perfect machine. The third class includes those where the machine is of such character that the particular use for which it is intended must be given special consideration, and require satisfactory operation in the actual execution of the object."

This Court, in the case of *Sydeman et al.* v. *Meade,* 32 App. D. C. 362, stated as follows as to what constitutes a reduction to practice:

> "Decisions involving this often-litigated question of actual reduction to practice may be divided into three general classes. The first class includes devices so simple and of such obvious efficacy that the complete construction of one of a size and form intended for and capable of practical use, is held sufficient without test in actual use. (Mason v. Hepburn, 13 App. D. C. 86, 89; Lindenmeyer v. Hoffman, 18 App. D. C. 1, 5; Loomis v. Hauser, 19 App. D. C. 401, 404; Couch v. Barnett, 23 App. D. C. 446, 449; Rolfe v. Hoffman, 26 App. D. C. 336, 342.)"

In the present case, the invention is simple and falls within the first class outlined in the above quotations. The ladder web which was produced in England by French and sent to this country was of a size and form intended for, and capable of practical commercial use. The physical characteristics of the new ladder web were obvious to anyone who inspected the same, and no tests or actual commercial use was necessary in order to reduce the invention to practice. The mere making thereof was sufficient.

Therefore, one must conclude that Appellants reduced the invention to practice by the making of the ladder web (French Exhibits 1, 1A, 1B, 1C and 25). As the result, the mere making of these samples and the introduction into this country constitutes a reduction to practice and can be overcome only by proof of Appellees that they made the invention prior to French. This, of course, they have completely failed to do since they allege a conception date not earlier than March 6, 1939, and the invention of George F. French was introduced into this country in February, 1939.

III. Filing of Foreign Application is Established by the Oath.

The oath attached to George F. French's original United States application (Colby Exhibit 50) swears that the British application had been filed on April 6, 1939. This, in the absence of any testimony to the contrary, establishes prima facie this date as the date of filing of the Convention

application in England. This is adequately set forth in the decision of the Commissioner of Patents in *Steel et al.* v. *Myers,* 205 O. G. 1021, in the following language:

> "If an applicant who is involved in interference has stated in the oath to the original application that he filed the application in a foreign country, that should be taken, in my opinion, as establishing *prima facie* that the foreign application was filed by him or with his knowledge and consent."

Therefore, the British application is a constructive reduction to practice.

TRIAL COURT'S FINDINGS.

The Judge of the District Court, Honorable Elmer D. Davies, did not render any opinion in the case, so that the basis of his reasoning in in awarding priority to Colby cannot be satisfactorily determined. The Trial Court filed findings of fact and conclusions of law (Appellants App. 7-10).

As to French's invention, in Finding No. 3 he held that French had made the ladder web in accordance with the invention in issue prior to January 27, 1939, in conjunction with Broughton and his associates. In Findings No. 4 and 5, the Court held that Roger French wrote a letter which contained a sample of the ladder web, and these were received by Harris and Miss Donovan in the first week of February, 1939.

The Court held in Finding No. 6 that Harris had intended to bring the sample to the attention of Gibbons, the Mill Manager, within a few days of Harris' receipt of the sample but an accident kept him until February 24, 1939.

In Finding No. 8, the Court stated that Harris went to Fall River and disclosed the ladder web in issue to Gibbons, early in March, 1939. He also held that Harris left part of the ladder web (Finding No. 9) with Gibbons, and took the other part back to New York with him.

The Court also held, in Finding No. 17, that Colby disclosed the invention to others on March 6, 1939. This fact is disputed by Appellants.

All the tribunals which have considered the evidence in the case have held that the invention was introduced into the United States by French at the beginning of February, 1939 and that Harris and Miss Donovan saw it at that time and also that Gibbons had it in his possession on or about the first of March, 1939. All of the tribunals have agreed in effect that Gibbons had the sample in his possession prior to any date that could be accorded to Colby. In view of these facts, which are substantially agreed upon, it is difficult to understand the basis of the Trial Court's holding that Colby was the first inventor. It is particularly difficult to understand the Court's decision since he had held that Gibbons was capable of understanding the invention (Finding No. 27). This, coupled with his holding that the ladder web in issue was disclosed to him early in March, 1939, appears conclusive that French's invention was fully understood prior to the best date which could be accorded to Colby.

Perhaps Judge Davies' decision was based upon his Finding No. 31, wherein he held that June 26, 1939 is the date of French's reduction to practice, and that there was no activity shown on the part of French for three months prior thereto (Finding No. 32). In this holding, the Trial Court apparently ignored completely several reductions to practice made by Gibbons, one before March 10, 1939 and another before March 16, 1939, both of which are in evidence. He also apparently did not take into consideration the fact that by March 18, 1939, a commercial order had been received and steps were being taken immediately to produce the ladder web in issue and supply it to the customer. Also, he seemed not to have taken into the consideration the fact that French had a British application on file in England on April 6, 1939, which according to law constitutes a constructive reduction to practice of the invention, since the United States application of French was filed under the International Convention.

In view of the above, it is considered that GEORGE F. FRENCH is the first inventor of the subject matter of the invention in issue and this Honorable Court is requested to reverse the decision of the District Court and award priority of invention to GEORGE F. FRENCH, with costs in in favor of Appellants.

Respectfully submitted,

H. C. BIERMAN,
141 Broadway,
New York 6, N. Y.

R. PEALE HERRICK,
Colorado Building,
Washington 5, D. C.
Attorneys for Appellants.

APPENDIX

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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8798.

GEORGE FREDERICK FRENCH and ROGER FRENCH, *Appellants,*

v.

GEORGE E. COLBY and INTERNATIONAL BRAID COMPANY, *Appellees.*

Appeal from the District Court of the United States for the District of Columbia.

APPENDIX TO BRIEF FOR APPELLANT.

1.

PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS DESIGNATED.

1 Filed May 21 1942

IN THE DISTRICT COURT OF THE UNITED STATES

For the District of Columbia.

Civil Action No. 15798.

GEORGE E. COLBY and INTERNATIONAL BRAID COMPANY, *Plaintiffs*, 47 Charles St., Providence, R. I.,

v.

GEORGE FREDERICK FRENCH and ROGER FRENCH, *Defendants*, Chester Road Mills, Manchester, England. In U. S., c/o H. C. Bierman, Atty., 37 W. 43rd St., N. Y. C.

Civil Action for Issuance of Patent

The Plaintiffs herein, for their Complaint, allege on information and belief:

1. That Plaintiff George E. Colby is a citizen of the United States and a resident of East Providence, Rhode Island; International Braid Company is a corporation duly organized and existing under and by virtue of the laws of the State of Massachusetts, and has a regular and established place of business in Providence, Rhode Island;

2. That Defendants George Frederick French and Roger French are subjects of the King of England, and are residents of Manchester, England;

3. That this is a civil action brought under the patent laws of the United States, more particularly under Section 4915 of the Revised Statutes (U. S. C. Title 35, Section 63.);

4. That heretofore, namely prior to April 10, 1939 Plaintiff George E. Colby, being the original, first and sole inventor of an Improvement in Ladder Web, duly filed in the United States Patent Office an application for Letters Patent on said invention, said application complying in all re-

spects with the requirements of the law in such cases made and provided, and complying in all respects with the Rules of Practice of the United States Patent Office, which application received Serial No. 266,951;

2 5. That on April 6, 1939 by proper instrument in writing, George E. Colby assigned his entire title and interest in and to his invention and application for Letters Patent therefor, to International Braid Company;

6. That on June 26, 1939, subsequent to the filing in the United States Patent Office of the aforementioned application for Letters Patent, and while said application was pending in the Patent Office, George Frederick French, a subject of the King of England, residing in Manchester, England filed an application for Letters Patent of the United States for the same invention as that described and claimed in the hereinbefore mentioned application of George E. Colby, and such subsequently-filed application of George Frederick French received Serial No. 281,228;

7. That on August 8, 1941 George Frederick French assigned the entire right, title and interest in and to said invention and application in the United States for patent therefor, to George Frederick French and Roger French, both of Chester Road Mills, Manchester, England, said assignment being recorded in the United States Patent Office January 3, 1942;

8. That on August 23, 1939 the Commissioner of Patents declared an Interference, No. 77,405 between the said application for Letters Patent, Serial No. 266,951 of George E. Colby, and said application for Letters Patent Serial No. 281,228 of George Frederick French. The issue of said Interference was revised from that originally declared by the Commissioner, and was finally resolved into the following counts, in connection with which proceedings were had:

3 Count 1. An integrally woven ladder construction consisting of two main webs having exterior faces of differing color characteristics, connected at their interior faces by cross tapes having color characteristics which in-

clude the color characteristics of both of the outer webs as a result of the cross tapes being constructed of wefts and of warps part of which possess the color characteristics of one main web and which are interwoven into only that main web, and the other part of which possess the color characteristic of the opposite main web and which are interwoven into only said opposite main web, while the warps which possess the unlike color characteristics of the main web extend over and adjacent to the inner surface of that main web, whereby each main tape is free on its exterior surface from the color characteristic of the opposite main web.

Count 2. Ladder webbing composed of two outer bandings, joined by woven cross-straps in two rows, those straps in one row lying in staggered relationship to those in the other row; wherein the outer bandings are different in colour; wherein the cross-straps contain warps of both such colours; and wherein the strap warps of each colour are bound into the banding of corresponding colour by the banding weft, but are merely bound to the inner face of the banding of different colour by the cross-strap weft.

Count 3. Ladder webbing composed of two outer bandings, joined by woven cross-straps in two rows, those straps in one row lying in staggered relationship to those in the other row; wherein the outer bandings are different in colour; wherein the cross-straps contain warps of both such colours; and wherein the strap warps of each colour alternate and are bound into the banding of corresponding colour by the banding weft, but are merely bound to the inner face of the banding of different colour by the cross-strap weft.

9. That the said Planitiffs duly presented to the Commissioner of Patents, as required by law, full and sufficient proof establishing the fact that the said George E. Colby, as heretofore alleged, was the true, original and first inventor of the improvement constituting the subject matter of said Interference, and after due proceedings had, including the presentation of evidence by the other applicant involved in said Interference and hearings before the Inter-

ference Examiner and the Board of Appeals of the United States Patent Office, the Commissioner of Patents denied priority of invention in the Interference issues to the said George E. Colby;

4 10. That thereupon an appeal was duly taken by the said Plaintiff, the said George E. Colby, from the decision of the Commissioner of Patents to the United States Court of Customs and Patent Appeals, and that thereafter the Defendant herein, George Frederick French filed an election under Section 4911 of the Revised Statutes (U. S. C. Title 35 Section 59a) that Defendant elected to have all further proceedings conducted as provided in Section 4915 of the Revised Statutes;

Wherefore Plaintiffs bring this Complaint under, and in accordance with, the provisions of the Statutes, Revised Statutes 4915 U. S. C. Title 35, Section 63 in such cases made and provided, and pray this Honorable Court:

1. To decree that the Plaintiff George E. Colby is the true, original and first inventor of the subject matter of said Interference, and that the International Braid Company as assignee of all right, title and interest in and to the said invention and application of said George E. Colby is entitled to receive Letters Patent of the United States for such invention;

2. To authorize the Commissioner of Patents to issue to International Braid Company as assignee of the said George E. Colby a patent on the above designated application, including the subject matter of said Interference;

3. For costs and such other and further relief as equity may require.

HERBERT B. BARLOW,
Attorney for Plaintiffs,
2005 Industrial Trust Building,
Providence, Rhode Island.

EARLE D. CRAMMOND
Earle Building
Washington, D. C.
Attorney for Plaintiffs

* * * * * * * * * * *

5 Filed May 27 1942

Answer

The defendants herein, answering the "Civil Action for Issuance of Patent", state as follows:

1. Defendants not being informed, deny the allegations of paragraphs Nos. 1 and 5.

2. Defendants admit the allegations of paragraphs 2, 3, 7, 8 and 10.

3. Defendants deny the allegations of paragraph 4, but admit that an application was filed in the United States Patent Office which received Serial No. 266,951.

4. Defendants deny the allegations of paragraph 6, but admit that George Frederick French filed an application in the United States Patent Office which is identified as Serial No. 281,228.

5. Defendants deny the allegations of paragraph 9, but admit that the Commissioner of Patents denied priority of invention to George E. Colby.

6 Wherefore, defendants pray that the complaint of plaintiffs herein be dismissed, that the Court hold that the Commissioner of Patents was correct in awarding priority of invention to George F. French, and to deny the request of plaintiffs that a patent be issued to George E. Colby, and that the complaint be dismissed with costs.

H. C. BIERMAN,
Attorney for Defendants
37 West 43rd Street
New York, N. Y.

* * * * * * * * * *

7 Filed Mar 2 1944

Findings of Fact and Conclusions of Law

The above entitled cause came on for hearing before the Court on the 15th day of November, 1943. Appearances: For plaintiffs were Herbert B. Barlow, Attorney, 2005 Industrial Trust Building, Providence, R. I., and Earle D.

Crammond, Attorney, Earle Building, Washington, D. C.; for defendants was H. C. Bierman, Attorney, 141 Broadway, New York City.

The cause was submitted upon the pleadings, evidence, exhibits, and argument of counsel for plaintiffs and defendants, and after due consideration thereof the Court enters its Findings of Fact and Conclusions of Law as follows:

Findings

1. The invention in issue is a ladder web for ventian blinds so constructed that the outer bands are of two different colors, the cross-straps are of alternate threads of each of said colors, and the strap threads of corresponding colors are bound into the respective outer bands so that no specks of different color show on the outside of the outer bands.

2. George Frederick French conceived the invention in England and disclosed it to Roger French in January, 1938.

8 3. Under the direction of George Frederick French, Spencer Broughton and his associates made and tested, with satisfactory results, ladder web made in accordance with the present invention, prior to January 27, 1939.

4. On January 27, 1939, Roger French wrote and sent a letter, identified as #600 (French Exhibit 14), to Thomas French and Sons, Ltd. at New York City, said letter containing a sample of the ladder web.

5. The letter of January 27, 1939 and the sample of the ladder web arrived in the United Stats and were received by Miss Theresa E. Donovan and Mr. John D. Harris at New York City during the first week of February, 1939.

6. Harris had intended to bring the sample to the mill at Fall River, Massachusetts, to the attention of the mill manager, Edwin J. Gibbons, within a few days of the date of receipt thereof by Harris, but suffered an accident which incapacitated him and kept him at his home between Feb-

ruary 8 and February 24, 1939, on which day he returned to his business duties.

7. On February 27, 1939, Miss Donovan prepared a memorandum (French Exhibit 15) which described the ladder web in issue and the fact that Harris was to discuss the same with Gibbons.

8. Harris went to Fall River, Massachusetts, with the memorandum and the ladder web in issue, and disclosed the same to Gibbons early in March, 1939.

9. Harris left with Gibbons a part of said ladder web received from England (French Exhibit 7), and took the other part (French Exhibit 25) back with him to New York.

10. Gibbons was urged by Harris to promptly reproduce the ladder web in issue at Fall River.

9 11. Plaintiff Colby's application was filed April 10, 1939, Serial No. 266,951, and is owned by International Braid Company, a Massachusetts corporation.

12. Defendant French's application was filed June 26, 1939, Serial No. 281,228, and is owned by George and Roger French, subjects of the King of England.

13. The Patent Office found there was common subject matter in the two patent applications and declared an Interference.

14. The specific issue is whether Colby or French is the prior inventor of the common subject matter.

15. Colby is a technically trained man, being a graduate mechanical engineer and previously an overseer of weaving.

16. Colby had in his own mind the invention in issue January 14th, 15th, 1939, or previously.

17. On March 6, 1939, Colby disclosed the invention to one Marshall, an employee under him who understood the invention. This date accordingly is Colby's date of conception.

18. The first step in producing a different construction of weaving is to provide a chain draft for governing the loom harness movement. This was made by plaintiff March 7, 1938.

19. The invention was produced, tested, and reduced to practice March 8, 1939, by Colby.

20. Manufacture was begun at once by plaintiff and sample shipments were made to plaintiff's Chicago office March 15, 1939, to Cooley March 20, 1939, and a quantity shipment to Bostwick-Goodill April 5, 1939.

21. Defendant George French's invention was made in England.

22. John Harris is a United States resident and Manager of French's United States company with a factory located in Massachusetts.

23. Prior to Roger French's trip to the United States in February, 1938, no web or other tangible record existed in England of the invention in issue and nothing in the United States.

24. John D. Harris is not sufficient of a technician to understand the invention in issue.

25. John D. Harris has found that a ladder web with the showing of the stitchings through an "eye sore" and called it "small pox." He had for many months prior to receipt of letter of January 27, 1939, tried to get Gibbons to eliminate it.

26. No disclosure to meet the counts of the issue of the interference was made by Roger French to John D. Harris or anyone else in the United States in 1938. At least insufficient for Harris to tell Gibbons.

27. Gibbons was the production manager of the French Fall River, Massachusetts, mill. He was the only technical French affiliate in the United States who could understand the invention.

28. The first written record Gibbons has relating to Ex. 1 is the chain draft dated March 10, 1939.

29. This chain draft is usually the first step taken in production work.

30. March 10, 1939, is the earliest proven date of knowledge and understanding of the invention to one capable of understanding it and is the date of conception awarded French.

11 31. French's reduction to practice is June 26, 1939, the date of filing United States application.

32. No activities of party French in the United States are shown for a period of approximately three months prior to June 26, 1939. Diligence is therefore lacking.

Conclusions

1. In an Interference proceeding between two patent applications, foreign activities of one inventor are of no avail to him in proof of priority of invention.

2. No date of conception of a foreign invention can be recognized until the invention is introduced into the United States.

3. A foreign invention introduced into the United States is subject to the same rigid rules as an invention made in the United States.

4. The patent laws are designed to ultimately make available to the public an increased fund of knowledge.

5. Mere unknown transmittal of an invention into the United States is not sufficient to substantiate a date of introduction into the country.

6. For a date of invention to be established in this country by reason of the introduction of a foreign invention, some person in this country must be capable of understanding the invention and the date of such person's understanding the invention is the date established.

7. Colby is awarded priority of invention.

This 29th day of February, 1944.

ELMER D. DAVIS
U. S. District Judge.

* * * * * * * * * *

12 Filed Mar 15 1944

Judgment

This cause having come on to be heard upon the pleadings, proceedings and the proofs presented by the respec-

tive parties, in open court, and having been argued by counsel for the respective parties, and the Court having considered the same, it is, therefore, adjudged as follows:

1. That the plaintiff, George E. Colby, is the first, true and original inventor of the Improvement in Ladder Web set forth in and claimed by his application for Letters Patent therefor, serial number 266,951, and forming the issue of Interference No. 77,405, involving his said application and the application of George Frederick French, filed June 26, 1939, serial number 281,228, the said claims in issue being in words and figures as follows:

Count 1. An integrally woven ladder construction consisting of two main webs having exterior faces of differing color characteristics, connected at their interior faces by cross tapes having color characteristics which include the color characteristics of both of the outer webs as a result of the cross tapes being constructed of wefts and of warps part of which possess the color characteristics of one main web and which are interwoven into only that main web, and the other part of which possess the color characteristic of the opposite main web and which are interwoven into only said opposite main web, while the warps which possess the unlike color characteristics of the main web extend over and adjacent to the inner surface of that main web, whereby each main tape is free on its exterior surface from the color characteristic of the opposite main web.

13 Count 2. Ladder webbing composed of two outer bandings, joined by woven cross-straps in two rows, those straps in one row lying in staggered relationship to those in the other row; wherein the outer bandings are different in colour; wherein the cross-straps contain warps of both such colours; and wherein the strap warps of each colour are bound into the banding of corresponding colour by the banding weft, but are merely bound to the inner face of the banding of different colour by the cross-strap weft.

Count 3. Ladder webbing composed of two outer bandings, joined by woven cross-straps in two rows, those straps

in one row lying in staggered relationship to those in the other row; wherein the outer bandings are different in colour; wherein the cross-straps contain warps of both such colours; and wherein the strap warps of each colour alternate and are bound into the banding of corresponding colour by the banding weft, but are merely bound to the inner face of the banding of different colour by the cross-strap weft.

2. That the Plaintiff, George E. Colby, is entitled to receive Letters Patent of the United States for his aforesaid invention as specified in the before-recited claims of his application.

3. That the Commissioner of Patents is authorized to grant and issue to plaintiff, pursuant to said application and in accordance with the patent statutes, letters patent for said invention and containing the before-recited claims, upon the plaintiff's filing in the Patent Office a certified copy of this adjudication and otherwise complying with the requirements of the law.

4. That the Plaintiffs recover of the defendant their costs and disbursements herein to be taxed. Enter March 13, 1944.

ELMER D. DAVIS
Judge

Form of Decree approved
Solicitors for Defendant

* * * * * * * * * *

313 Filed Apr 17 1944

Designation of Record

Defendants herein hereby designate those portions of the record which are to be forwarded by this Court to the Court of Appeals of the District of Columbia in connection with defendants' appeal from the adverse final judgment filed March 15, 1944.

The items to be contained in the record are as follows:

1. Bill of Complaint.
2. Defendants' Answer
3. Judgment filed March 15, 1944
4. Deposition of Edwin J. Gibbons (Rec. pp. 95-128)
5. Deposition of John D. Harris (Rec. pp. 164-168)
6. Deposition of John D. Harris (Rec. pp. 176-208)
7. Deposition of Theresa E. Donovan (Rec. pp. 210-216)
8. Deposition of Roger French (Rec. pp. 216-229)
9. Deposition of Georg F. French (Rec. pp. 229-235)
10. Deposition of Spencer Broughton (Rec. pp. 235-240)
11. Defendants' (French's) Exhibits 1 to 26 inclusive.

314 12. Findings of Fact and Conclusions of Law dated Feb. 29, 1944.

13. (No opinion was filed by the Trial Court)
14. This "Designation of Record".

Respectfully submitted,

H. C. BIERMAN
Attorney for Defendants-Appellants
141 Broadway
New York, N. Y.

A copy of the foregoing Designation of Record is mailed simultaneously herewith to Messrs. Barlow & Barlow, attorneys for plaintiffs-appellees, 2005 Industrial Trust Bldg., Providence, R. I.

H. C. BIERMAN
Attorney for Defendants-Appellants

* * * * * * * * * *

II.

EXCERPTS FROM TESTIMONY AND PROCEEDINGS DESIGNATED.

112 *Deposition of Edwin J. Gibbons*

"**Edwin J. Gibbons,** having been first duly sworn by Leonard Gold, a Notary Public of the State of New York, was examined and testified as follows:

"Direct Examination

"By Mr. Bierman:

"Q. Please state your full name. A. Edwin J. Gibbons.

"Q. What is your occupation? A. Mill manager, Thomas French & Sons, Ltd., Fall River.

"Q. Massachusetts? A. That's right.

"Q. How long have you been mill manager for Thomas French & Sons? A. Four years, a week ago yesterday.

"Q. Have you been there continuously during this entire period? A. I have.

"Q. Where do you reside? A. 149 Anthony Street, East Providence, Rhode Island.

"Q. Have you read the counts of the present Interference? By 'counts' I mean the three claims on the attached sheet, which I hand you (handing document to the witness)? A. Yes.

"Q. Do you understand the subject matter thereof? A. I do.

"Q. I hand you a piece of ladder web contained in an envelope, and ask you whether you can identify it. A. This is a piece of ladder tape that Mr. Harris sent me in the first two or three days of March, 1939.

"Q. Who is Mr. Harris? A. Mr. Harris is the
113 President of the American concern of Thomas French & Sons.

"Q. Where is his office located? A. 620 Fifth Avenue, New York.

"Q. What is his full name? A. John D. Harris.

"Q. Do you know who made this sample? A. It was made in Manchester, England, according to Mr. Harris' statement.

"Q. In whose possession has this sample been since the time it was given to you in the beginning of March, 1939? A. It has been in my possession all the time.

"Q. Up to the present moment? A. That's right."

Now, I might say this is what he testified about, later introduced as French Exhibit 1. (Handing exhibit to the Court.)

(Continuing reading:)

"Q. Will you describe the construction of this sample? A. Well, one body is a solid color, contrasting to the other body.

"Q. By 'body,' you mean outer band? A. Outer band. The straps are constructed of alternate colored threads in the warp, and both of those colors correspond to the two body warps. The different colors in the strap warps bind into the body warp of the same color. In other words, where these strap warps are alternate threads of red and gray, the gray ends bind into the gray body warp, and the red strap warp ends bind into the red body warp.

"Q. Taking a binding-in where the gray strap warps are bound into the gray band or body, what happens to
114 the red strap warps at that binding-in? A. They are floated over—assuming that it is woven that way, with the red on top and the gray on the bottom,—

"Q. That is, you are assuming that the— A. Assuming that it is woven with the gray on the top and the red on the bottom.

"Q. That is, you are assuming that the ladder web is woven in the loom with the gray body on top and the red body on the bottom? A. That's right. The gray strap warp ends are floated over the bottom body filling.

'Q. That is, they are bound only to the inner face of the red bottom body?

"Mr. Barlow: I object to the question as leading."

The Court. Overruled.

Mr. Bierman. (Continuing reading:)

"A. Well, each of these straps is composed of alternate threads of the same colors as the two bodies, and the object in the whole thing is to make invisible stitching. Naturally, the only way to do that is by interlacing with the bodies only the colors of those bodies.

"Q. And how is the interlacing at the binding-in areas accomplished? A. In stitching the bottom body, it would be accomplished by dropping the red strap warp ends below the bottom body filling. Of course, that forms one pick.

It would then be raised up for probably three picks,
115 and dropped again below the bottom body filling.

"Q. And what does the bottom body filling do? A. It passes over those threads, and, naturally, binds those warp threads into the bottom body.

"Q. You spoke of filling. Does that mean the same as weft? A. Yes.

"Mr. Bierman: The piece of ladder web, relative to which the witness has testified, is offered in evidence as French Exhibit No. 1."

(Piece of ladder web, marked on deposition as French Exhibit No. 1 in evidence, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. Did you take any steps towards, yourself, at the Fall River plant, making Tu-Tone ledder web, in which the binding-in areas did not have specks showing through? A. Oh, yes. That was January, 1938.

"Q. I call your attention to a chain draft bearing the date March 10, 1939, and ask you whether you can identify this."

The answer is, "Yes."

Question:—

The Court: What do you want to mark that? Do you want to offer that in evidence?

Mr. Bierman. Well, it is marked in evidence a little bit later, after a few questions and answers.

The Court. All right.

Mr. Bierman. (Continuing reading:)

"Q. Will you tell us what this is? A. This is the chain draft for one of our looms, made out to effect what
116 we call a hidden stitching.

"Q. For use with the Tu-Tone tape? A. For use with the Tu-Tone tape.

"Q. Who made this chain draft? A. I did.

"Q. When was it made? A. March 10, 1939, at the latest. It may have been made a day or two before that, but that is the date I have on here. In other words, we may make this out and give it to the fixer, and then not put all this data on until it comes back.

"Q. And the date that this chain draft bears would be the latest date at which this was made? A. That is true.

"Q. Was this a chain draft for a Tu-Tone ladder web in which the stitching was concealed? A. Yes.

"Q. At the time you made this chain draft, did you have before you the sample, French Exhibit 1? A. I did.

"Q. Can you tell us how long before you made the chain draft you had French Exhibit 1 in your possession? A. Probably five or six or seven days.

"Mr. Bierman: The chain draft, relative to which the witness has testified, is offered in evidence as French Exhibit 2."

The Court. All right.

(Chain draft, marked on deposition as French Exhibit 2 in evidence, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. Did you use this chain draft to produce ladder web? A. I did.

"Q. I hand you a piece of ladder web, and ask
117 you whether you can identify it. A. Yes, this is a piece of ladder web that most likely was produced

with that chain draft. So far as our records go, this came from the very loom, our No. 7 loom, in which that chain draft was used.

"Q. When was this sample made? A. It was made March 10, 1939, the same day I made the chain out, or a day or two before that,—not later than March 10.

"Q. In whose possession was this piece of ladder web from the time it was made? A. It has been in our possession, in our files.

"Q. At the factory at Fall River? A. At the factory at Fall River.

"Mr. Bierman: The piece of ladder web, relative to which the witness has testified, is offered in evidence as French Exhibit No. 3.

(Piece of ladder web, marked on deposition as French Exhibit No. 3, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. I hand you a letter dated March 14, 1939, and ask you whether you can identify it. A. Yes, this is a letter from me to Mr. Harris.

"Q. That was written by you on the date it bears? A. Yes.

"Q. Was it signed by you? A. Yes.

"Q. Do you know when it was mailed to Mr. Harris? A. Most likely on the date that is shown here, March 14.

"Q. Will you explain in general what the nature of the letter is, as regards the subject matter of this Inter-
118 ference? A. It is a report on the study I put into the Tu-Tone sample, submitted as French Exhibit 1, and discusses the interlacing of the hidden stitching.

"Mr. Bierman: The letter just identified by the witness is offered in evidence as French Exhibit No. 4."

(Original letter, March 14, 1939, Thomas French & Sons, Ltd., E. J. Gibbons, to John D. Harris, marked on deposition as French Exhibit No. 4, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. I call your attention to a second letter, dated March 14, 1939, and ask you whether you can identify it? A. Yes.

"Q. Go ahead. A. It is a letter from Mr. John D. Harris to myself.

"Q. Do you recall receiving this letter? A. I do.

"Q. Approximately when did you receive it? A. I received it the 15th of March, 1939.

"Q. Does that contain any statements relative to the subject matter of this Interference? A. Yes, it refers to the report from Manchester that the hidden stitching is effected by binding into each body the proper color, presumably from the strap warp.

"Mr. Bierman: The letter identified by the witness is offered in evidence as French Exhibit No. 5."

(Original letter, No. 249, March 14, 1939, Thomas French & Sons, Ltd., John D. Harris, to E. J. Gibbons, marked on deposition as French Exhibit 5, was received in evidence.)

119 Mr. Bierman. (Continuing reading:)

"Q. Referring to French Exhibit 3, do you have a special name given to this type of ladder web? A. That particular style we term 'Dekratape,' which means a decorated tape.

"Q. I call your attention to a letter dated March 15, 1939, and ask you whether you can identify it. A. Yes, this is a letter from John D. Harris to myself, received probably the 16th of March, 1939.

"Q. Does it have any reference to the subject matter of this Interference? A. Yes, it refers to Mr. Harris' question directed to our Manchester branch, asking how they accomplished the hidden stitching.

"Mr. Bierman: The letter identified by the witness is offered in evidence as French Exhibit No. 6."

(Original letter, No. 254, March 15, 1939, Thomas French & Sons, Ltd., John D. Harris, to E. J. Gibbons, marked on deposition as French Exhibit No. 6, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. I hand you another letter, dated March 15, 1939, and ask you whether you can identify it. A. Yes, it is a letter from myself to Mr. John D. Harris, referring to a sample of the Dekratape that we sent to a customer on the Coast.

"Q. Do you know what sample of Dekratape is referred to in this letter? A. Yes, this one (indicating). It is the sample exactly the same as this, excepting we had a rayon filling in the back.

120 "Q. That is, the sample referred to in that letter was identical with French Exhibit No. 3, with the exception that in the back band, or body, which is in the natural color, the weft was of rayon? A. That's right.

"Mr. Bierman: The letter, relative to which the witness has testified, is offered in evidence as French Exhibit No. 7."

(Original letter, March 15, 1939, Thomas French & Sons, Ltd., E. J. Gibbons, to John D. Harris, marked on deposition as French Exhibit No. 7, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. Which part of this letter did you refer to, specifically? A. The second paragraph.

"Q. I call your attention to a leter dated March 16, 1939, and ask whether you can identify it. A. Yes, this is a letter from Mr. Harris to myself.

"Q. About when was it received by you? A. I should say March 17, 1939.

"Q. Does that have any reference to the subject matter of this Interference? A. Yes.

"Q. Where is this reference contained? A. In the second paragraph, and practically acknowledges the receipt of the samples of Dekratape with the hidden stitches, and states that Mr. Harris is going to send these samples to the customer immediately by air mail.

"Q. You say this acknowledges the receipt of the Dekratape samples with the hidden stiches? A. By Mr. Harris.

121 "Q. By Mr. Harris. Had you sent this sample to him previously? A. Most likely it went through within a day or two previous to this.

"Q. That is, you had sent it to him a day or two before the date of his letter? A. Yes.

"Q. The sample referred to in this letter of March 16th, 1939, was similar to some of the products that we have here before us? A. Yes.

"Q. Can you identify one of them? A. Probably the same as this French Exhibit 3, and most likely had incorporated the rayon filling in the back body, or the duck body.

"Q. You are now referring to French Exhibit No. 3? A. Yes.

"Q. In your answer you stated that the sample referred to in the letter of March 16, 1939, was probably similar to French Exhibit No. 3. In what respects was it similar? A. Well, as I recall it, it was exactly the same, excepting for the rayon filling.

"Q. The structure of the binding-in portions was identical with French Exhibit 3? A. That is true.

"Mr. Bierman: The letter, relative to which the witness has testified, is offered in evidence as French Exhibit No. 8."

(Original letter, No. 256, March 16, 1939, Thomas French & Sons, Ltd., John D. Harris, to E. J. Gibbons, marked on deposition as French Exhibit No. 8, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. I call your attention to a carbon copy of a let-

122 ter dated March 20, 1939, and ask you whether you can identify it. A. Yes, it is a letter from Mr. John D. Harris to myself, received probably on the 21st of March, 1939, and advises that the—

"Mr. Barlow: Just a minute. Do you know any more about the letter than—

"Mr. Bierman: Wait a minute. Don't interrupt his testimony.

"Mr. Barlow: I think he had better identify the letter a little bit more before he tells what is in it.

"Mr. Bierman: He is on his way, don't you see? Proceed, Mr. Gibbons.

"A. (Continuing)— advises that the samples sent several days previously to Mr. Harris had been received in Los Angeles by the customer to whom we had sold the Dekratape, and instructs us that the rayon filler on the street side of the tape is considered quite an improvement.

"Q. Did you receive the original of this letter? A. I did.

"Q. Do you know where the original of this letter is? A. In our files in Fall River.

"Q. Could you produce the letter, if requested to do so? A. I could.

"Mr. Bierman: The carbon copy of the letter relative to which the witness has testified is offered in evidence as French Exhibit 9."

Mr. Barlow. Is the original there?

123 Mr. Bierman. No. You agree.

The Court. That objection has been withdrawn?

Mr. Bierman. Yes, objection withdrawn.

The Court. Oh, he produced the original.

(Carbon copy of letter, No. 259, March 20, 1939, John D. Harris to E. J. Gibbons, marked on deposition as French Exhibit 9 for identification, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. I call your attention to a chain draft dated March 16, 1939, and ask you whether you can identify it. A. Yes, this is a chain draft made out by me, and designed to produce hidden stitching in a Tu-Tone tape; in other words, by the use of a mottled strap.

"Q. Will you explain the meaning of 'mottled strap'? A. The term is accepted to mean one in which the alternate colors are used in the warp to the straps.

"Q. What is the meaning of the term 'mingled' when applied to ladder web? A. Usually is meant to describe a gray body in the warp and olive drab filling.

"Q. Who made this chain draft? A. I made it.

"Q. When did you make it? A. It must have been previous to March 16, 1939, because that is the date that appears on here.

"Q. There is a notation on the chain draft, 'G-39.' What does that mean? A. That is the file number, or the progressive number that we assign to any accepted chain or any accepted sample that we make.

"Q. What do you mean by the word 'accepted,' as you have used it in your answer? A. Well, in developing
124 any kind of web, we may make a chain draft out on which we might want to make some changes, and after those changes are made, which may incorporate improvements over the original draft, we make out one that includes all the improvements.

"Q. And the chain draft of March 16, 1939, has all of the improvements, and is a final draft? A. Yes.

"Mr. Bierman: The chain draft identified by the witness is offered in evidence as French Exhibit No. 10."

(Chain draft, March 16, 1939, marked on deposition as French Exhibit No. 10, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. Did you make a ladder web in accordance with the chain draft, French Exhibit No. 10? A. We did.

"Q. How soon after the date of Exhibit 10 did you make such ladder web? A. It would be not later than the date shown in the draft.

"Q. I call your attention to two samples of ladder web, each of them bearing the notation 'G-39.' Can you identify them? A. Positively, made from the same chain draft.

"Q. French Exhibit 10? A. That's right.

"Q. When were they made? A. Not later than March 16, 1939.

"Q. Where have the samples which you are now holding been since that date? A. In our files in Fall River, along with the chain draft."

The witness testifying with these two in his hand
125 (indicating).

(Continuing reading:)

"The pieces of ladder web identified by the witness are offered in evidence as French Exhibits 11 and 12, respectively."

(Pieces of ladder web, marked on deposition as French Exhibits Nos. 11 and 12, were received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. Were the samples, French Exhibits 11 and 12, made for sample purposes, or for commercial production? A. As I recall it, when those samples were made, we continued right on with the production.

"Q. And have you discontinued production? A. Oh, no, we have been doing it ever since.

"Q. I call your attention to a letter dated March 7, 1939, and ask you whether you can identify it. A. Yes, this is a letter from Mr. Harris, from Toledo, Ohio.

"Q. To whom was it addressed? A. It was addressed to me, probably received on the 8th or 9th of March, 1939.

"Q. Does that have any relation to the subject matter of this interference? A. It refers to a visit of Mr. Harris at Bostwick-Goodell, on the date of March 7th, and says that Bostwick is greatly pleased with the idea of the mottled cross strap. He states, 'in which the binding-in does not show on the outer tape, that is, like the sample made up by England.'

"Q. Which sample is referred to in this letter? A. The original Tu-Tone tape sample, sent over by Man-
126 chester.

"Q. Identified as French Exhibit No. 1? A. Right.

"Mr. Bierman: The letter, relative to which the witness has testified, is offered in evidence as French Exhibit 13."

(Original letter, March 7, 1939, John D. Harris to Thomas French & Sons, Ltd., marked on deposition as French Exhibit No. 13 for identification, was received in evidence.)

Mr. Bierman. And "Direct examination closed."

(Cross examination of Edwin J. Gibbons, on deposition, was read by Mr. Barlow as follows:)

127 Cross Examination

By Mr. Barlow:

Q. Do you know under the laws of what state Thomas French & Sons, Ltd. is incorporated? A. No, I don't. Mr. Bierman might know.

Q. Do I understand that Thomas French & Sons have a factory at Fall River? A. That is true.

Q. And they have a selling office, do they, in New York City? A. That's right.

Q. Do you know if they have any other manufacturing location other than Fall River? A. Not in this country.

Q. Are you the top man of the Fall River factory? A. That's right.

Q. And do you take orders from Mr. Harris or any other person as to what you should do at the Fall River factory? A. Only in the direction of policy; that is, the details are all left to me.

Q. Do any orders that you do take come from Mr. Harris —as to policy, let us say? A. Yes.

Q. You don't get any orders from Mr. French, who is the interfering party in this case? A. No.

Q. Everything comes from Mr. Harris? A. Yes.

Q. How was Exhibit 1 delivered to you? A. Mr. Harris brought that to me personally.

Q. What did he say about it when he brought it to you? A. He told me that was a sample of Tu-Tone tape with the

hidden stitching that was made by Thomas French & Sons in Manchester.

Q. Did he describe to you how it was made? A. No, Mr. Harris did not pose as a designer or an expert on weaving.

Q. All he did was to hand it to you? A. That's right.

Q. And say that he had received it from somewhere else? A. That's right.

Q. And was it your job to find out how it was made? A. Yes.

128 Q. In order to do that, what did you do, to find out how it was made? A. All I had to do was put a pick glass on there, because it is quite simple. In fact, he might almost have described it over the telephone to me; that is about all that would have been needed.

Q. What was the length of the piece he left with you? A. I should say 9 or 10 inches.

Q. Did he have another piece of it that he took away with him? A. I couldn't say, but I think so. Yes, I know he did, because I think I saw that piece at one time. I saw that in New York, and at a time when this was still in Fall River.

Q. That was at some later time, was it? A. Yes.

Q. Was the time that you received this Exhibit 1 the first time you had ever seen anything like that? A. That is true; that is, so far as it applied to a ladder tape. I have used that color arrangement many times before.

Q. You are referring to the cross strap now, are you? A. Yes.

Q. And when you say the "color arrangement," do you mean the alternating— A. Colored threads.

Q. Colored threads? A. Yes.

Q. What do you mean when you say you used it before? A. In other products: elastic webs, suspenders, blanket bindings, boot webs.

Q. Was that while you were with Thomas French & Sons that you used it? A. No.

Q. You referred in your testimony to the date of January, 1938. What is that supposed to mean? A. At that time, and since then, up until the time I received this sample, we had been working on that problem, on and off, as we had the opportunity.

Q. That is something that you were working on from ideas originating in your own head? A. Yes. You see, we have grown in Fall River. We have been very busy there, and it takes up a lot of my time watching every single
129 thing "that goes on there; and I don't always have the time I would like to have, of course, to spend on these things.

"Q. Well, what problem were you trying to solve from January, 1938, on? A. It was all directed toward the hiding of this speckled effect when you use a solid colored strap on a Tu-Tone tape, because we had used Tu-Tone tape long before this, you know.

"Q. How long before? A. Oh, I should say roughly late '37 or early '38, but always with the solid woven strap.

"Q. And ever since the beginning of your use of Tu-Tone tape, you had been trying to solve the problem of hiding the stitchings that showed through? A. Periodically, as the question would come up, or as we had time to devote any thought to it.

"Q. And had you succeeded in doing that in any way whatsoever—hiding the stitchings? A. I shouldn't say entirely satisfactorily.

"Q. Have you samples of what you had accomplished along that line.

"Mr. Bierman: I object to the question as being entirely outside of the scope of the issues here. It is an attempt at a fishing expedition, to find what some one else did along the same line, and any question of invention by a third party has no bearing here."

Mr. Barlow. You see, your Honor, that is exactly the same situation that came up in the testimony of Mr. Marshall. Counsel for the other side went exploring

130 around as to what Mr. Marshall might have done earlier; and, if you will notice in the direct-examination of Mr. Gibbons on page 82, the fifth question from the bottom of page 82:

"Did you take any steps towards, yourself, at the Fall River plant, making Tu-Tone ladder web, in which the binding-in areas did not have specks showing through?" And he says:

"Oh, yes. That was January, 1938."

And I am asking as to that answer that he gave to that question, as to what he did.

The Court. I think it is competent evidence.

Mr. Barlow. And you notice that Mr. Bierman instructed the witness not to answer it. I think the witness's testimony should be entirely thrown out, and I so move.

The Court. Overruled. You couldn't throw out all his testimony just because he didn't answer that one question.

Mr. Bierman. I might say that the work that Mr. Gibbons had done on trying to solve this same problem has eventuated into a patent application which is now in the Patent Office. It has no bearing at all upon the construction of the ladder web that we have in question here, although it solves the same problem.

Mr. Barlow. Of course, that is something I know nothing about, had no opportunity to.

The Court. I don't either. I don't know what his answer would be. The only way I could find out is to have you bring him in here. If you bring him into court I will hold it is competent to ask him that. Proceed.

Mr. Bierman. Skipping over that discussion, page 94:

131 "Q. You spoke of Tu-Tone tape having been made previous to your seeing Exhibit 1. Would you know of the advertising of this Tu-Tone tape? A. Possibly. Yes; we had a small house organ. I am quite sure it was mentioned in that. I think in the early days it was referred to as 'Duplex' tape.

"Q. Did you ever see an ad such as that (handing document to the witness). A. Yes.

"Q. This is an ad in the November, 1938, issue of 'Venetian Blind Dealer,' is is not? A. That is right.

"Q. Page 17? A. Right.

"Q. In that ad it says, 'Tu-Tone tape is Brand New.' Is that true? A. I am not entirely familiar with all of these ads.

"Q. But that ad does state that Tu-Tone tape is brand new. A. This says Tu-Tone tape, as distinguished from Duplex tape. In other words, I think, probably, this name, 'Tu-Tone', had been applied to that type of tape only shortly before this ad was printed. That would be my thought on that.

"Q. That is an ad by the concern for whom you work, is it not? A. That is right.

"Mr. Bierman: Are you going to offer that in evidence?

132 Mr. Barlow: I think we will offer some part of it in evidence eventually.

Q. So you think that ad meant that the name was new, instead of the product? A. I am very sure that is so, because, as I said, in the early days that was known as, and shipped out by us as Duplex tape.

Q. Do you place these names, "Duplex" and "Tu-Tone",— A. I do not.

Q. —on the invoices which go out? A. Yes, that is so. I thought you referred to whether I christened those or not.

Q. No, I did not. You have those invoices, do you, at the Fall River plant? A. That's right.

Q. Do you call them invoices? A. Yes.

Q. How far back do you keep your invoices? A. Oh, I think we have invoices back to the first shipments we made up there.

Q. And are they under your custody? A. They are under the custody of the office manager.

Q. Who is he? A. Mr. Emil M. Cyr.

Q. What is his residence? A. I am not sure. I think it is County Street, but I wouldn't be sure. It is in Fall River.

Q. Is he an officer of the corporation? A. No, he is not an officer. You meant secretary, treasurer, or——

Q. Yes, I did. A. No, he is not.

Q. Is he under your control, that is, do you supervise him? A. No.

Q. Have you completely changed the Tu-Tone or two-color tape from the construction where the specks showed through, called "small-pox" in one of these letters, to the construction where the specks do not show through? A. I don't know what you mean by "changed construction." You say changed the construction?

Q. Yes. A. Do you mean is all of our product now made with the hidden stitching?

133 Q. That is right. A. It is all made with the hidden stitching, yes.

Q. So that after you started to make it with the hidden stitching, you continued to make it with the hidden stitching, and you never made it with the small-pox type of stitching? A. That is true.

Q. In the invoices which were sent you, was any change made to denote the change to the hidden stitching from the specked stitching? A. There was no change made.

Q. So there would be nothing that appeared on the invoices that would show? A. No.

Q. As to when the change took place? A. That is true. I might qualify that last statement by saying that I don't supervise the making out of the invoices.

Q. Who does supervise the making out of the invoices? A. Mr. Cyr.

Q. The construction of Exhibit 1 is a conventional twill in the tapes, is it not? A. That is true.

Q. That is the type called "herringbone weave"? A. Herringbone.

Q. Which had been used in tapes right along? A. Type of herringbone weave that had been used ever since we first used it in Manchester, maybe fifty years ago. It has been copied by almost everybody that makes Venetian blind tape.

Q. Why wasn't Exhibit 3 made in the conventional way? Why wasn't that made with a twill? A. Because in incorporating the decorative rayon threads we increased the volume of body, so we made the back a tighter weave to compensate for the weight on the face, so that the blind made from this tape woud hang evenly. That is based on the fundamental that a plain weave will not take up—will not shrink back as much as a two and two. In other words, your take-up is greater.

Q. What you are explaining to me has something to do with obtaining an entirely different result than was exemplified in Exhibit 1, is it not? A. No, no. We still are
134 attempting the hidden stitching. In fact, the stitching of the strap is no different here than it is here (indicating).

Mr. Bierman: The witness has referred successively to French Exhibit 3 and French Exhibit 1.

Mr. Barlow: (To the Reporter) Will you repeat the last answer, please?

(The answer referred to was repeated by the Reporter.)

Q. Yes, but you were not explaining about the hidden stitching; you were explaining about a certain weight, and tight weave in the back tape, and in the red tape. A. You asked why this was not made a twill weave.

Q. Yes, I did. You were trying to obtain two different results, then, were you not? A. No.

Q. In Exhibit 3? A. No, we were making this Dekratape at the time this sample was received from Manchester.

Mr. Bierman: French Exhibit 1.

A. (Continuing.) It was in the loom at that same time, so, naturally, when we saw the hidden stitching in this Exhibit 1, we incorporated it in the Dekratape sample, represented by French Exhibit 3.

Q. Did you have any looms on twill weave at the time you received Exhibit 1? A. Oh, yes.

Q. But you chose to put the experiment of change into your Dekratape loom rather than in the twill looms that were running at the same time? A. This was the more urgent problem at the time, and the difference was only a day or two.

Mr. Bierman: The witness has again referred to French Exhibit No. 3 in giving his answer.

Q. Did you lay out the chain draft, Exhibit 2, yourself? A. I did.

135 Q. You put all these crosses on Exhibit ? A. I did.

Q. And is that your handwriting at the end. A. It is.

Q. And also at the bottom, the word "original"? A. Yes, it is.

Q. And do I understand that you put the writing on the end here, after you put the crosses on? A. That is true.

Q. Did you make up the chain? A. I did not make the chain.

Q. Who did that? A. That would be one of our loom fixers; I couldn't say offhand just who did that.

Q. How many do you have? A. Oh, four or five that are capable of doing that.

Q. What are their names? A. Joseph James, Fred Robinson, Thomas Wild, Robert Rushton. I think perhaps those are all the names of the fixers we had at that time.

Q. Do you know their residences? A. No.

Q. Do you have those on some payroll record in the factory? A. We do.

Q. Is that the name of the book it is in— "payroll record"? A. No, "Employee's record."

Q. Did you put the crosses on Exhibit 10? A. That is a copy of my chain draft.

Q. Where is the original? A. I couldn't say. It might have been destroyed. You know, in making out a chain draft of this type, you are quite apt to make it out in

pencil, and go along pretty rapidly, as Mr. Colby probably knows. It may become soiled, it may become torn, and it is apt to accumulate all kinds of foreign matter. So this is a copy.

Q. When did you make the copy? A. Why, it is hard to say. It has been in our records since March 16, 1939. I should say it was made about that time, because we had no occasion to refer to this once it is put into our records. A copy for the use of the factory would be made out and kept in a drawer available to all our fixers, so that if those copies are lost we still have the original, or copy original, to refer to.

136 "Q. Is that also your writing (indicating)? A. That is not my writing, no.

"Q. But you did put the crosses on the copy? A. It is hard to say; I wouldn't say. Crosses like that might be made by anybody, and not be distinctive. I know I put the red pencil marks on there. That just designates the sections.

"Q. The writing at the end is not yours, then, either, is it? A. No, that is not. The figures here are (indicating).

"Q. Those figures you refer to are 'G-39'? A. That is right.

"Q. Did you pull these chain drafts, Exhibits 2 and 10, from the records of the company, yourself? A. Oh, yes.

"Q. How long ago? A. Yesterday morning, or the day before yesterday.

"Q. Do you know Mr. Marshall, who testified for Colby? A. Yes.

"Q. When was the last time you saw him?"

Mr. Barlow. No objection there.

The Court. Go ahead.

Mr. Bierman. (Continuing reading:)

"A. I don't recall just when I saw him last.

"Q. Have you been to his house since the middle of February of this year?"

Mr. Bierman. No objection.

Mr. Bierman. The witness refused to answer the question. (Continuing reading:)

137 "Q. Will you say whether or not the question of Mr. Marshall's testimony has been discussed by you with Mr. Harris, or between you and Mr. Harris? A. It has not.

"Q. Has it been discussed between you and Mr. Bierman? A. It has not.

"Q. In Exhibit 6, under the heading, 'Tu-Tone tape', it is stated: 'I am sorry to cause you such headaches with the Tu-Tone sample which came from England. I will, in a round-about way, ask Mr. Roger French to tell me how it is done. I will give him the reason that I want to compare your method with theirs, of course inferring that you found a way to do it very quickly.'

"Do you know of any reason why there should be a round-about method used to find out how the English company made the tape? A. No, my question was whether or not that was made on a drop lay or pick and pick loom. I felt that if I knew that, my approach to the problem would be different.

"Q. What possible ways were there in which you thought it might be done? A. That can either be made on a drop lay loom or a cross shot loom. The easiest method is the drop lay, or pick and pick.

"Q. Why should there be a round-about method used to find that out? A. I do not know.

"Q. Had you given Mr. Harris to understand that you had had some headaches from trying to find out how this Tu-Tone sample was made that came from England? A. The only question was whether it was on a pick and pick loom or a cross shot.

138 "Q. Do you know what the P.S. to that letter means? A. Yes.

"Q. What does it mean? A. It refers to a second grade tape, one with less picks, less ends, and heavy in starch. It has no reference to Tu-Tone.

"Q. There is reference made in this correspondence, Mr. Gibbons, to National Venetian Blind Company. Do you know their address? A. Only that it is Los Angeles.

"Q. Were shipmnets made direct from Fall River to these people? A. Yes.

"Q. Was that Dekratape that is referred to in this letter of March 20 a shipment direct from Fall River? A. What was that question, again?

"(The question was repeated by the Reporter.)

"A. I believe they refer to the tape we sent first to New York, to Mr. Harris, and he re-mailed it from there, or reshipped it from there.

"Q. That was just a sample, then; is that right? A. Yes.

"Q. Did an order follow the submission of the sample? A. I think Mr. Harris took that order personally, when he was on the Coast.

"Q. Do you know when, after March 20, 1939, you made a shipment? A. I do not.

"Q. Your records in the Fall River plant will show, I suppose? A. Yes.

"Q. You have never been asked to look that up? A. No.

"Q. In your records at Fall River, when you make
139 a shipment of an order, such as Dekratape, would somewhere or other there be a sample kept of that Dekratape to show exactly the material that was shipped? A. I don't think so.

"Q. You don't think so. A. I don't think so, no. It would be identified by the size and the color, and the name.

"Q. Did you take Exhibit 13 out of the files at Fall River, yourself? A. I did.

"Q. When? A. The day before yesterday.

"Q. Have you a specimen of a tape like Exhibit 3, which was made on the loom prior to your change of the chain for making the hidden stitching? A. No, we hadn't started to weave the straps in when that sample came from Manchester.

"Q. Did you make any change in the warp? A. It seems to me that we started out with the idea of putting in a gray face and gray back, and a colored figure; but we had only gotten it just drawn in the loom when this sample came along, and then we changed the strap and changed the face. I don't think it was all drawn in the loom when we got that sample.

"Mr. Bierman: By 'that sample', you mean French Exhibit No. 1?

"The Witness: That is right.

"Q. Had you made a chain draft for the way you were going to make it before you changed it? A. I think not.

"Q. Isn't that the first thing you do before you draw it in the loom? A. No, not necessarily. You need a
140 harness draft to draw it in the loom. The harness draft will determine how it is drawn in the loom. The chain draft only shows the—in our case only shows the interlacing of the strap. On this particular Dekratape you have to have another chain to execute the design.

"Q. Was there a drawing-in draft made? A. Oh, yes, a drawing-in draft.

"Q. And then was there a different drawing-in draft made when the change was made? A. No, that wouldn't be necessary.

"Q. Mr. Gibbons, in Patent Interferences there is filed what is called a preliminary statement. I don't know whether you are familiar with patent practice enough to know that. A. No.

"Q. But that preliminary statement is an affidavit which sets forth certain dates with reference to the invention. Now, there was filed in this Interference, as in every other Interference, a preliminary statement of dates on which certain things took place with reference to the invention. Were you consulted at all as to the dates that might be set up in such an affidavit; do you remember? A. I don't remember. How long ago would that be?

"Q. There was a statement filed on the 11th of November, 1939; there was a statement filed on November 13, 1939. Do you recall? A. I don't recall, no.

"Q. Do you remember being asked anything about this construction, such as Exhibit 3, with the mottled strap, back in November, 1939? A. I don't recall that I was.

141 "Q. Were you asked back in 1939, the latter part 1939, if you recalled when you first made construction such as Exhibit 3? A. I don't remember being asked that, no.

"Q. If the construction of this invention was made in the United States by Thomas French & Sons, you would be apt to know about it, would you not? A. I think likely.

"Q. Now, in this preliminary statement, it is stated that 'On or about December 22, 1937, he first embodied the invention in ladder web, and again on or about about April 15.' A. Who is the 'he' they are referring to?

142 Q. That is referring to George F. French. A. I wouldn't know that.

Q. But it would be nothing that took place in this country, would it? A. No.

Q. And neither would the April 15, 1938, date mean anything that took place in this country; is that true? A. That is true, as far as I know.

Q. And there was nothing about this invention, that is, the issue of this Interference here, that was disclosed to you on January 15, 1938, was there? A. No. January, 1938—no, I was over there in April.

Q. Was anything disclosed to you in April, 1938? A. No.

Q. When you say "over there," you mean over in England? A. Yes.

Q. But he never told you anything about this invention? A. No, it wouldn't be likely that he would.

Q. But you were the construction man in this country, were you not? A. Yes, but I think that Mr. Colby will bear with me that in anything of this type, that is in an experi-

mental stage, it is usually kept more or less secretive up until the time it is ready to be put out.

Q. This was in the experimental stage, was it? A. Why, I can't say from any definite knowledge, but I presume it was, because anything like this—it doesn't just come out of the air like that; it is usually a process of gradual improvement.

Q. Do you think by any chance this December 22, 1937, date would be the date of the Tu-Tone tape that had the specks showing through? A. I haven't the least idea.

Q. Would that be the date when you first made it in this country? A. I wouldn't know, without referring to records.

Q. What sort of a record would you have? A. Possibly our shipping dates, invoices; but I do know they made Tu-Tone tape across the water before we made it here.

Q. That was with the specks showing through. A. Yes.

143 Q. Would you have any factory record as to when you first filled an order for sale of the Tu-Tone tape with the so-called concealed stitching, such as Exhibit 3? A. That is the same question you asked me before. No.

Q. There would be no record? A. No, for the reason that we would want to give our customers or jobbers an opportunity to dispose of the tape with the speckled straps before giving them too much of the other material with the hidden straps.

Q. When you testified a little while ago, as I understood it, you said that anybody could have told you about this construction such as Exhibit 1 over the telephone, and you could have made it; is that right? A. That is right.

Q. What would be the key words that they would tell you over the telephone that would enable you to make that? A. Alternate colored threads in the strap, with one color stitched to one body and the other color stitched to the other body. That is all that would have been necessary to tell to any textile designer.

Q. As I understood, Bostwick-Goodell had placed an order with Thomas French & Sons for Tu-Tone tape, and the amount of that order was about a hundred gross. I think that was in March, 1939. Did you know of that? A. I wouldn't recall that unless I might be confronted with a record, and then only in case it actually came right through the plant. Of course, all our orders, or most of our orders, come through the New York office.

Q. Did you read Mr. Goodell's testimony? A. No.

Q. Or any portion of it? A. I didn't even know he gave testimony.

Q. He cancelled an order that he had placed with Thomas French & Sons for that Tu-Tone tape in the amount of about a hundred gross. Did you know that that was cancelled? A. As I say, that order may have been cancelled before it came through to Fall River. That cancellation would have come to the New York office.

144 "Q. And if it had, you wouldn't have known about it? A. If it were cancelled before the order came up, I wouldn't have known about it.

"Q. The fact is that you did not know he had placed an order and cancelled it, for that amount? A. I couldn't say that without being confronted with the records.

"Q. You don't remember anything about it? A. I don't recall; I wouldn't recall that, anyway.

"Q. A hundred gross, Tu-Tone tape, would come to around $2,000, would it not? A. That wouldn't mean anything to us.

"Q. It would come to around that figure, would it not? A. No, I don't think that much.

"Q. About what would it come to? A. Of course, I don't put the prices on there; I don't pay too much attention to the prices that are on the invoices. I should say probably three-quarters of that amount would be plenty.

"Q. An order of that amount is a valued order, is it not? A. Not comparatively, no; not with the 33 looms that are pounding out sixteen hours a day.

"Q. Would you think that if there was an order like that cancelled, it would be worth while calling the man up about?

A. No. 100 gross?

145 Q. Yes. A. No; that is, I wouldn't consider it worth my while to bother Mr. Harris with it. It might come through the order clerk, and he might make an off-hand remark to me, and that's all there would be to it.

Q. If Mr. Harris were away, would such a cancellation be taken up with you? A. No, that would come to the New York office, regardless; and Mr. Harris usually leaves a pretty well-defined itinerary behind him, and the office could get in touch with him. He rather religiously calls back and gets in touch with the New York office whenever he is away. I know that, because we have just been through the South for two weeks, and I know he called back quite frequently.

Q. To change over a loom that was making solid color ladders to mottled ladders, you would have to change the warp, would you? A. Only one-half of the warp threads in each strap.

Q. You would have to change? A. It means a very simple operation.

Q. Is that something unusual for any person in your employ to do: to cut out one color and tie in a new color? A. No, because we have so many pieces running on that same color that to cut out a warp of 14 ends is almost nothing. Save to tie it in another space, there would be no trouble at all. Our looms are very facile, easily adapted to changes of that kind.

Q. What kind of looms do you run? A. That is our own make, our own make looms.

Mr. Barlow: Cross examination closed.

Mr. Bierman: Deposition closed.

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182 *Testimony of John D. Harris*

Thereupon, **John D. Harris** was called as a witness for and on behalf of Defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bierman:

Q. Are you the John D. Harris who testified in Colby v. French Interference No. 77405? A. I am.

Q. In your testimony you stated that you received a sample, French Exhibit No. 1, from England the first part of February, 1939, and that you gave that sample to Mr. Gibbons at the mill at Fall River, Massachusetts, on or about February 28, 1939. What happened to you in between the receipt of the sample from England by you and the delivery thereof by you to Mr. Gibbons? A. On my way to the office—it happened to be in wintertime—I slipped on the ice and broke a couple of ribs.

Q. And were you confined to your home? A. And I went to the office and then returned to the home and was confined there for about a week or so.

Q. I hand you four papers and ask you, where were these papers up to the present time? A. Within my personal file in my home in Larchmont, New York.

Q. To what do they relate? A. They relate to the
183 fact of my having broken the ribs.

Q. When did you break your ribs? A. On February 8th, 1939.

Q. Is that shown by one of the documents? A. Yes. In a letter to the secretary of the Illinois Commercial Men's Association I sent him a check, and I stated, "This morning on my way to business I slipped on the iced pavement and upon the doctor's examination he has found two broken ribs."

Q. You say you sent him a check. Did you mean— A. A check for assessment.

Q. Oh. A. A check for the assessment that was due right around about that time.

Q. When did you return to the office? A. On February 24, 1939.

Q. Is that shown by one of the documents? A. It is shown by a memorandum I wrote to Mr. Gibbons, who was the superintendent of the mill in Fall River, in which I stated, "I am glad to say that I am back at the office, and I hope I will not have any more days of lying in bed."

And that is the doctor's receipt (indicating).

Mr. Bierman. He has not testified as to these (indicating papers).

By Mr. Bierman:

Q. Will you continue with your description of the other two documents? A. One represents a check sent to me by the Illinois Commercial Men's Association dated April 21st.

184 Q. 1939? A. 1939. And the other represents a memorandum, my own memorandum, on a bill received from the doctor dated March 1st, in which I have the date when I mailed him the check.

Mr. Bierman. All four documents, as a unit, are offered in evidence as French's Exhibit No. 24.

The Court. It will be admitted.

(Four documents identified by Mr. Harris were marked French Exhibit No. 24 for identification and received in evidence.)

By Mr. Bierman:

Q. Your previous testimony was to the effect that you brought the sample received from England to Fall River on or about February 28, 1939, but there is some dispute as to whether you left the entire sample there or took a portion of it back with you. I now hand you a piece of ladder web attached to a letter and ask you to explain what that webbing is and the circumstances under which you wrote

that letter. A. I testified at the proceedings in Mr. Bierman's office, and the question came up as to what became of the sample. I stated that I had taken it or a part of the sample to Fall River. Mr. Bierman sent me a copy of the testimony I had given, and after reading it, under date of May 13th I wrote to Mr. Gibbons—

Q. Nineteen— A. Under date of May 13, 1941, I wrote to Mr. Bierman stating that there was an answer made by me which was not explicit, and therefore I requested permission to correct that answer.

Mr. Barlow. Could I see that paper?

185 By Mr. Bierman:

Q. What did you do about the portion of the sample that you stated you had taken back with you from Fall River? A. I looked through all my records to ascertain—to see whether I could locate that particular piece.

Q. And did you locate it? A. Yes. And then I sent it on to you with the letter I wrote under date of May 13, 1941.

Q. And what is that piece of ladder web which is attached to this letter? A. This is the original piece of ladder web which came from England attached to the letter sent to me by Mr. Roger French, the managing director of the English company.

Q. That is, this sample that you have before you was the piece of the sample that had been sent to you by England? A. Oh, yes. Sure.

Q. And the other piece is that identified as French Exhibit No. 1? A. I presume that that is the one.

Mr. Bierman. The letter dated May 13, 1941, together with the piece of ladder web attached thereto, is offered in evidence as a unit.

The Court. Submit it to counsel.

Mr. Barlow. It is objected to as a self-serving statement.

The Court. Let me see the letter.

Mr. Barlow. Taken after his original testimony.

By the Court:

Q. You are testifying now that these were the facts?
186 A. Yes, sir.

The Court. All right. Overruled.

(Letter, May 13, 1941, Mr. Harris to Mr. Bierman, together with ladder web attached thereto, was marked French Exhibit No. 25 for identification and received in evidence.)

Mr. Bierman. Direct-examination closed.

Mr. Barlow. Could I see that exhibit again?

The Court. Yes.

(French Exhibit No. 25 was handed to Mr. Barlow.)

Mr. Barlow. No cross.

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195 *Deposition of John D. Harris*

"**John D. Harris**, having been first duly sworn by Leonard Gold, a Notary Public of the State of New York, was examined and testified as follows:

"Direct Examination

"By Mr. Bierman:

"Q. Please state your full name. A. John David Harris.

"Q. Where do you reside? A. In Larchmont, New York.

"Q. What is your occupation? A. President and Treasurer of Thomas French & Sons, Ltd.

"Q. Where is the place of business of this concern? A. Offices in New York, 620 Fifth Avenue; mill in Fall River, Massachusetts.

"Q. Are you associated with the company known as Thomas French & Sons, Ltd. of Manchester, England? A. As representative, yes.

"Q. The American corporation is a subsidiary of the British corporation? A. It is a separate corporation, incorporated under American laws.

"Q. Are you familiar with Tu-Tone ladder web, made by the Manchester corporation? A. I am.

"Q. I show you a letter dated January 27, 1939, and ask you whether you can identify it? A. Yes.

"Q. What is that letter? A. Letter from Mr. Roger French to the American company, to my particular attention.

"Q. Do you find Mr. French's signature on the letter? A. Yes, his initials, which is the usual way he signs the letters.

"Q. You recognize his signature? A. Oh, yes.

"Q. Can you say approximately when you received this letter? A. The first week in February.

"Q. Of what year? A. 1939.

"Q. Did you open the letter yourself when it arrived? A. It is difficult to say. Sometimes I open the mail, and sometimes Miss Donovan opens the mail.

"Q. Who is Miss Donovan? A. My secretary.

"Mr. Bierman: The letter relative to which the witness has testified is offered in evidence as French Exhibit No. 14.

"(The same was thereupon marked French Exhibit 14 in evidence.)"

(Letter, January 27, 1939, Thomas French & Sons, Ltd., Gibbons to Harris, marked on deposition as French Exhibit 14 in evidence, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. French Exhibit 14 contains a reference to a sample of Tu-Tone tape. Do you remember whether such a sample was attached to the letter when you received it? A. I know positively there was a sample attached to it.

"Q. I call your attention to several pieces of ladder web on the table before me. Will you see whether any of those samples was the specimen attached to this letter, French Exhibit 14. A. There is no doubt about it, this was
197 the sample (indicating). Excuse me. I could positively swear that this was the sample, but, naturally, there is nothing to show that it is part and parcel of the letter; but I can almost swear that was the sample attached.

"Q. In giving this answer, you were referring to French Exhibit No. 1, so marked? A. Yes, sir.

"Q. With reference to French Exhibit 14, will you tell us how you know that this letter was received at about the time you stated? A. Because customarily, both for the American company and the British company, we number each letter consecutively, so that we will be able to know by the following numbers as to the approximate date when this was received.

"Q. What did you do with the specimen that was attached to this letter, and which is now identified as French Exhibit No. 1? A. I kept that sample in my desk for a few days, intending to take it up with me to Fall River; but just about that time I slipped and broke my ribs, and was delayed from going to Fall River for about three weeks, I think, afterwards.

"Q. Can you tell me when you went to Fall River with this sample? A. Probably February 27th, February, 28th.

198 Q. I hand you a typewritten sheet, entitled "Fall River Memos, 2/27/39," and ask you what this is. A. Before going to Fall River, I had my secretary, a few days before I contemplated making the trip, make various memorandums of the different executives I had to see in Fall River, and what I had to discuss with them.

I enumerate these items, and the day I intend leaving, or the day I go, Miss Donovan gives me this typewritten sheet with all the details, such as, "Discuss with Mr. Gibbons tensile strength, identifying threads," and so on.

Q. On what day did she give you this memorandum? A. If I leave on an afternoon train, she would give it to me the same day; if I leave the following morning, as is sometimes my habit, by automobile, starting very early from Larchmont, I would have this in my possession the previous day, before leaving.

Q. Is there any indication in this memorandum that you brought the specimen, French Exhibit 1, to Fall River?

A. Yes, the second item says, "Tu-Tone tape. Manchester has made a sample eliminating specks in mingled. Strength of binding not quite as much as before."

That was a matter for me to discuss under the heading of "Gibbons."

Q. Can you say approximately when you were in Fall River and discussed this matter with Mr. Gibbons? A. Oh, yes, February 27 or February 28.

Q. Did you take the sample, French Exhibit 1, with you at the time? A. Yes.

Q. What did you do with that after you discussed the matter with Mr. Gibbons? A. I showed this to Mr. Gibbons, and asked him what he thought about it. We discussed the matter of the weakening of the strap, because only half the quantity of the yarn which goes into it would appear in each body; but, nevertheless, we figured it was

199 the solution to our troubles that I had personally been asking him to produce for many months, to eliminate what I often facetiously referred to as 'small-pox.'

"Q. Did you leave French Exhibit 1 with Mr. Gibbons, or did you take it back to New York with you? A. I probably took this sample back with me; I am pretty sure I did take it back with me.

"Mr. Bierman: The letter relative to which the witness has testified is offered in evidence as French Exhibit No. 15.

"(The same was thereupon marked French Exhibit 15 in evidence.)"

(Letter, No. 249, March 14, 1939, Thomas French & Sons, Ltd., Harris to Gibbons, marked on deposition as French Exhibit 15 in evidence, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. I call your attention to a letter from Gibbons to yourself, marked French Exhibit 4." That is up there (indicating).

"Did you receive this letter? A. Yes, this is my handwriting on the side; I must have received it."

The Court. I do not have that exhibit. I have 14. I do not have 4.

The Deputy Clerk. They were offered yesterday.

Mr. Bierman. Yes. They are in that file.

The Court. Of course, that was an exhibit to Gibbons' testimony, wasn't it?

Mr. Bierman. Yes. This is just to corroborate Gibbons.

The Court. Yes. All right. Go ahead, and the Clerk will find it.

200 Mr. Bierman. (Continuing reading:)

"Did you receive this letter? A. Yes, this is my handwriting on the side; I must have received it.

"Q. Approximately when did you receive it. A. The day after, presumably. If March 14 was a Friday, I wouldn't have received it until March 17, Monday; but if March 14 was a weekday I would have received it the day after.

"Q. I note in the second paragraph of this letter there is a statement made as to the Tu-Tone sample received from Manchester. What sample was referred to in this statement? A. This sample, Exhibit No. 1.

"Q. That is, French Exhibit 1? A. Yes.

"Q. Does that statement refresh your recollection as to whether you left French Exhibit 1 with Gibbons, or whether you took it back to New York with you? A. I naturally would have taken that sample back with me, because I showed the sample to several other people.

"Q. I call your attention to a series of letters, marked French Exhibits 5, 6, 7, 8, 9, and 13; and ask you whether you can identify them. A. Yes, I can identify these. You don't want me to read them, do you?

"Q. No. A. Surely, I identify them.

"Q. Can you state collectively whether you wrote the letters that bear your signature, and received those letters which are addressed to you? A. Yes, undoubtedly, surely.

"Q. Were they sent or received respectively in due course of mail? A. Yes, surely.

201 "Q. I call your attention to a carbon copy of a letter dated March 16, 1939, and ask you what that letter is. A. This is a letter which I sent by air mail to the National Venetian Blind in Los Angeles.

"Q. What subject did it deal with? A. It deals with the —to use the exact expression in this letter, 'The spots which show through on the Tu-Tone tape have been eliminated from the street side.'

"Q. This letter states that you were sending two samples of Tu-Tone tape to National Venetian Blind Company. There are a number of specimens of tape on the desk before me. Can you pick out one or more which would represent the samples which you sent with your letter of March 16, 1939? A. That would be the Dekratape—that one (indicating), the fancy tape.

"Q. This tape which is marked French Exhibit 3? A. Yes. They are the only people we sent that to at that time.

"Q. Can you state when you sent this letter? A. The same day it was written, March 16.

"Q. Where has this copy of the letter been up to the present time? A. In the files, in New York.

"Mr. Bierman: The letter relative to which the witness has testified is offered in evidence as French Exhibit No. 16.

"(The same was thereupon marked French Exhibit 16 in evidence.)"

(Carbon copy of letter, March 16, 1939, Thomas French & Sons, Ltd., to National Venetian Blind Company, marked on deposition as French Exhibit 16 in evidence, was received in evidence.)

202 Mr. Bierman. (Continuing reading:)

"Q. I hand you a telegram dated March 18, and ask you to identify the same. A. I identify this.

"Q. Who sent that telegram, and to whom was it addressed? A. This telegram was sent by the purchasing

agent of the National Venetian Blind Company of Los Angeles to our company, for my attention. It was received, evidently, on a Saturday, because I see it was sent up to my home in Larchmont, which is the understanding that I have with the Telegraph companies—to transmit all cables and telegrams, when our place is closed, to my private house.

"Q. What did this telegram have reference to? A. Had reference to our letter of the 16th.

"Q. Your letter of March 16, 1939, which is identified as French Exhibit 16? A. Yes, sir.

"Q. The telegram bears a date, March 18. Do you know what the year was? A. 1939.

"Mr. Bierman: The telegram relative to which the witness has testified is offered in evidence as French Exhibit 17.

"(The same was thereupon marked French Exhibit 17 in evidence.)"

(Telegram, March 18, 1939, National Venetian Blind Company to Thomas French & Sons, Ltd., marked on deposition as French Exhibit No. 17 in evidence, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. I show you a carbon copy of a letter dated March 23, 1939, and ask you if you can identify it. A. 203 I do.

"Q. When was it sent, and by whom? A. It was sent by Thomas French & Sons, Ltd. of New York to Thomas French & Sons, Ltd., Manchester, England, dated March 23. The letter is numbered 736. I dictated the letter, and sent it for the attention of Mr. Roger French.

"Q. Is there anything in the letter relating to the Tu-Tone tape, such as is exemplified by French Exhibits 1 and 3? A. Yes, the first paragraph in the letter refers to it.

"Mr. Bierman: The letter relative to which the witness has testified is offered in evidence as French Exhibit 18.

"Mr. Barlow: Objected to as secondary evidence."

The Court. Just a minute. I was reading this other exhibit. Now, which letter is that you objected to? Exhibit what?

Mr. Bierman. Exhibit 18.

The Court. 18. Well, I have not finished rading it yet. What is the nature of the objection?

Mr. Barlow. Just that it is secondary evidence; that is all. They could have gotten the original. It is their own firm.

Mr. Bierman. I believe that the original has now been put into evidence in the depositions taken in England. Am I right on that?

Mr. Barlow. I didn't see any original copies come from England.

204 The Court. Overruled.

(Carbon copy of letter, No. 736, three sheets, March 23, 1939, Harris to Mr. R. French, marked on deposition as French Exhibit No. 18 in evidence, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. Where is the original of this letter, as far as you know? A. It would be in Manchester, England.

"Q. I now call your attention to a letter dated March 30, 1939, and ask you to identify the same. A. I do.

"Q. Will you explain it more fully? A. This is a letter addressed to Thomas French & Sons, New York, for my attention, from the Canadian Ventilating Shades, Ltd. of Peterborough, Canada, signed by Mr. Bunnell.

"Q. What was the nature of that letter? A. He acknowledges receipt of a Tu-Tone sample card, and asks whether we are now manufacturing the tape, as is being done in England, in such a way that the inner color does not show on the outer color.

"Q. When did you receive this letter? A. Probably the day after it was written. When I say 'received,' I mean it

was received, probably, in our New York office, but may not have come to my attention on March 31. I may have been away; I don't know.

"Mr. Bierman: The letter relative to which the witness has testified is offered in evidence as French Exhibit 19.

"(The same was thereupon marked French Exhibit 19 in evidence.)"

205 (Letter, March 30, 1939, Canadian Ventilating Shades, Ltd. to Thomas French & Sons, New York, N. Y., marked on deposition as French Exhibit No. 19 in evidence, was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. There was some testimony on behalf of Colby by an individual named Charles Goodell, to the effect that in March, 1939, an order for Tu-Tone tape, which had been given to you by Bostwick-Goodell Company, was cancelled for the reason that the Tu-Tone ladder web made by Thomas French & Sons had the binding-in showing through on the outside of the outer bands. Can you tell me whether this testimony is correct? A. Partially so, partially not so.

"Q. Will you explain? A. An order was cancelled because Bostwick-Goodell Company particularly requested the exact colors as shown on their color card. We told them it was not possible, for the small quantity involved, to give them the exact colors. They then cancelled the order. We returned the orders to them.

"Q. Mr. Goodell stated that you had visited him at Norwalk, Ohio, in the spring of 1939; is that correct. A. Yes.

"Q. Can you tell me the exact date when you saw Mr. Goodell at Norwalk, referring to a memorandum entitled 'Itinerary of Mr. John D. Harris,' which I now hand you? A. That was my itinerary of the short trip I made to Cleveland, Norwalk, Toledo, Sturgis, Chicago. My itinerary called for leaving New York on March 6th at 8 p. m., arriving in Cleveland on March 7, arriving in Norwalk

206 the same day. I arrived in Norwalk that same day.

"Q. At approximately what time? A. Probably about one o'clock, twelve-thirty or one o'clock in the afternoon.

"Mr. Bierman: The memorandum relative to which the witness has testified is offered in evidence as French Exhibit No. 20.

"(The same was thereupon marked French Exhibit 20 in evidence.)"

(Carbon copy of memorandum of itinerary of Mr. John D. Harris, marked on deposition as French Exhibit No. 20 in evidence, was received in evidence.)

Mr. Bierman. (Reading:)

"Q. Where did you spend that night? A. After visiting with Mr. Goodell, I took the bus, or the interurban train—I am not sure which—to Toledo, and stayed overnight in Toledo at the Commodore Perry Hotel.

"Q. I show you a receipt number E-42339, of the Commodore Perry, Toledo, Ohio, and ask you whether this refreshes your recollection as to your staying there on the night of March 7, 1939? A. Yes, it does.

"Q. Whom did you see at Bostwick-Goodell Company on that day? A. Mr. Charles Goodell. I may have asked for his father also, who was then living, but I don't know whether I saw him or not.

"Q. I hand you some papers, including a very short typewritten memo, and ask you whether this refreshes your recollection as to what the nature of your discussion
207 was with Mr. Goodell on March 7, 1939? A. Yes, these are copies of correspondence and original correspondence relative to Mr. Goodell's inquiry about Tu-Tone tape.

Q. What is the date of this letter? A. January 6, 1939, and in answer to their letter of January 5, 1939.

Q. I call your attention to the very short typewritten memo attached to these letters, and wish to know how it happened that this memo was so attached. A. When I

make a trip, I generally take with me pending matters. I have copies of letters, and attached to them any memoranda which I want to discuss with the potential customer or actual customer.

Attached to this letter is my own memorandum, on which I have written, "Bostwick, I.W.G. (that is Mr. Goodell, Senior, who has passed away). Re Tu-Tone. Show new idea so that cross strap threads do not show through. This is new, may interest them."

In the second part, I have, "Discuss the matter of color cards. We will make certain allowances, or, better still, print cards if our name and trade mark appear."

And the third memorandum: "Offer imported Tu-Tone at a price."

Those were memoranda to remind me what to discuss when I saw him.

Q. And did you discuss those matters with him at your meeting? A. Oh, undoubtedly.

Q. Do you recall whether it was the senior Mr. Goodell or the junior Mr. Goodell? A. Junior, Mr. Charles. I am not sure I saw Mr. I. W. Goodell at the time. All my discussions during the past five, six years were with Charles Goodell, because I. W., who used to take care of that end of the business, turned it all over to his son.

Q. Who typed the memorandum from which you have just testified? A. I typed this myself, on my own typewriter in the office.

208 "Mr. Bierman: The documents which the witness has just identified are offered in evidence as a unit as French Exhibit No. 21.

"(The same were thereupon marked French exhibit 21 in evidence.)"

(Group of three documents, marked on deposition as French Exhibit No. 21 in evidence, were received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. I hand you a series of letters dated March 10, 1939; March 11, 1939; a Railway Express Agency receipt dated March 10, 1939; and a carbon copy of a letter dated March 13, 1939. I would like to have you identify these letters, giving the background involved in the correspondence. A. When I saw Mr. Charles Goodell on March 7, I tried to interest him in Tu-Tone tape. He stated that he would require quite a large quantity of tape for sampling purposes in order to circulate all his trade before he could think of putting this in. I then wired the mill direct from Norwalk, Ohio, to Fall River, asking them to dispatch a roll of each color so that Bostwick-Goodell could cut these rolls into small pieces, and use the small sized pieces of tape for sampling.

"The mill sent these direct to Norwalk, but the colors were not satisfactory; and under date of March 11, Mr. Goodell said, 'We are returning the six rolls of the Tu-Tone tape sent to us for sample purposes. We cannot use this tape because it does not match our standard colors.'

209 "He said, 'Would appreciate your exchanging this tape for us with some which does match.'

"That letter, and the Railway Express Agency receipt, pertain to the return of the samples. Under date of March 10 Mr. Goodell sent us an order for 42 gross of Tu-Tone tape, and he particularly stated that 'the inside colors must match the enclosed sample of tape. Otherwise, the shipment will be rejected, and returned at your expense. Also, please be advised that we want the Linen Mingled color to be on the outside of the roll in each instance.'

"Because of the difficulties in the past with this particular account, I thought it best to have everything on the safe side; so under date of March 13 I thanked him for the order, and told him that we would do all we possibly could to please him, but that we could not match identically his shades of colors, but sent him a color card showing the colors in which Tu-Tone was at that time being made. Later on—

"Q. Just a minute.

"Mr. Bierman: The letters relative to which the witness has just testified are offered in evidence as a single exhibit, French Exhibit No. 22.

"(The same were thereupon marked French Exhibit 22 in evidence.)"

(The group of documents marked on deposition as French Exhibit No. 22 in evidence was received in evidence.)

Mr. Bierman. (Continuing reading:)

"Q. I now hand you a letter dated March 15, 1939,
210 from Bostwick-Goodell, and a copy of a letter dated March 20, 1939, to Bostwick-Goodell. Will you please explain the nature of these letters, and the circumstances surrounding the sending and receipt of them? A. Mr. Goodell wrote and stated that unless we could furnish him with the Tu-Tone tape, and have the colors match those colors he sent us, we would have to cancel the order; so under date of March 20 I wrote to him and said, 'We exceedingly regret that your letter of March 15 leaves us no alternative but to return your orders numbers B-2876-7-8.'

"Mr. Bierman: The letters identified by the witness are offered in evidence as a single exhibit, French Exhibit 23.

"(The same was thereupon marked French Exhibit 23 in evidence.)"

(Letter, March 15, 1939, Bostwick-Goodell to French, and copy of letter, March 20, 1939, French to Bostwick-Goodell, marked on deposition as French Exhibit 23 in evidence, were received in evidence.)

Mr. Bierman. "Direct examination closed."

(Cross-examination on deposition was read by Mr. Barlow, as follows:)

211 Cross Examination

By Mr. Barlow:

Q. Is Thomas French & Son, Ltd. an American company? A. Yes, sir.

Q. A corporation organized and existing under the laws of some state? A. New York State.

Q. Does Thomas French & Sons, Ltd. of England own stock in the American company? A. Thomas French & Sons, Ltd., no.

Q. They own no stock in the company? A. No, sir.

Q. Do they in any way have any control of the American company? A. I don't want to—may I speak off the record? I don't want to be foxy. Thomas French & Sons, Ltd. don't own any stock, but the individuals of Thomas French do. I want to make it clear to you. I don't know if it is permissible or not——

Q. That is fine; that is a good answer. A. I mean, I want to be straightforward about it.

Q. That is a good answer. And do those individuals own a majority of the stock in the American company? A. Yes, sir.

Q. How many of those individuals are there? A. Two.

Q. You have full charge of the American company, do you? A. Yes, sir.

Q. The American company put on the market a Tu-Tone tape which has what you called "small-pox", that is, specks of the dark color showing through under the lighter colored web at a time previous to the time they put out a tape such as exemplified by Exhibit 3? A. Exhibit 1.

Q. Is that true? A. Yes, that is true.

Q. And when did they first put out this "small-pox" tape that you referred to? A. May I ask, are you speaking of the American company only, or are you speaking of the Thomas French Company in Manchester?

Q. I am speaking primarily of the American company.

A. The American company is only in existence for
212 six years, and the American company sold Tu-Tone tape six years ago, but it was not made by the American company; it was imported by the American company, and manufactured by the British company.

"Q. Do you have charge of the advertising done by the American company? A. Yes, sir.

"Q. You authorized the ads that are issued, do you? A. I do.

"Q. Did you authorize that ad I show you in the November 1938 issue of 'Venetian Blind Dealer' (handing document to the witness)? A. I did, yes, sir.

"Q. Page 17? A. Yes.

"Q. It says here, 'Tu-Tone tape is Brand New.' A. Right.

"Q. What do you mean by that? A. You are not a salesman; you are a lawyer. Mr. Colby knows what it means, and I know.

"Q. What do you say it means? A. It implies to the trade that it is brand new, but actually it is not brand new, created in November, 1938, because it is now on the Radio City buildings, Rockefeller Center, and has been there for eight years. But that is an advertising talking point; that is about all I can answer you.

"Mr. Barlow: I will offer in evidence this page of 'Venetion Blind Dealer' of November, 1938, identified by the witness, as Colby Exhibit 46.

"Mr. Bierman: The exhibit is objected to as being entirely immaterial to the question of priority, which is the only question involved herein."

213 Mr. Barlow. Now, I offered that in evidence previously, your Honor. I believe that is already marked in evidence.

Mr. Bierman. I didn't understand your remark.

Mr. Barlow. "Question:"—

Mr. Bierman. Just a minute. I didn't understand your remark. What did you say just now?

The Court. He said he offered it in evidence.

Mr. Barlow. I said it had already been offered in evidence.

Mr. Bierman. I object to the exhibit as being immaterial, has no basis at all in the direct-examination of a witness, and it has nothing to do with the question of priority.

The Court. I do not see that it is material in any way at this time, but I will admit it. If it becomes material I will consider it. If it is not material I won't pay any attention to it.

Go ahead.

(Page of "Venetian Blind Dealer" of November, 1938, marked on deposition as Colby Exhibit 46, was received in evidence.)

Mr. Barlow. (Continuing reading:)

"Q. Are you sufficient of a technician to know what was done in Exhibit 1, to change it from one with the specks showing through, to one with the specks not showing through? A. No, sir.

214 Q. So it would be impossible for you to give Mr. Gibbons any instructions along that line, would it? A. Oh, yes, impossible; it would be impossible.

Q. And all the instruction that you had was contained in that letter which Roger French sent you under date of January 27, 1939, was it? A. There was no instruction; it was just a sample attached to the letter.

Q. But you had no other instruction beyond that? A. No, sir.

Q. So everything that you learned about the construction was through Mr. Gibbons, was it? A. Yes, surely.

Q. Do you recall any other technical people besides Mr. Gibbons to whom you showed Exhibit 1. A. Technical people, no, sir.

Q. Do you know what a preliminary statement is in connection with an Interference? A. I do not. I mean, is this a preliminary statement that you are doing now? I mean, I am not familiar with the law at all, no, sir.

Q. No, Mr. Harris. When an Interference is declared in the Patent Office, an affidavit is filed by each of the inventors of the application, setting forth dates when certain things happened. There were statements of that sort filed in the present Interference. A. I see, yes, sir.

Q. Do you recall being consulted in connection with the filing of such affidavits, as to dates? A. I don't think so, no, sir.

Q. I have here copies of affidavits that were filed in the Patent Office (handing documents to the witness). One of those is— A. "Preliminary statement of George F. French."

Q. Does that refresh your recollection? A. It is very hard for me to answer.

Q. You don't remember seeing anything like that before? A. No.

Q. Or being consulted as to the information contained in such affidavits? A. Most of these matters per-
215 taining to legal things are so distasteful to me that, candidly, I may have been consulted, but I would have no permanent recollection of them. This is not familiar to me. My attorney may have shown it to me, or discussed it with me, but I can't recall now.

Q. The first time you recall ever seeing a sample such as Exhibit 1 was when it came in with this letter of January 27, 1939? A. Yes, sir.

Q. Exhibit 14, is that right? A. When that letter came in from Roger French, would be the first time I had actually seen a piece of Tu-Tone with the specks eliminated.

Q. If the English company had sent in a sample such as Exhibit 1, would you have been likely to have seen it previous to that time? A. If they sent it to me?

Q. If they sent it in to the United States. A. Not necessarily, because I do happen to know correspondence regarding other matters relating to patents has been sent—correspondence with the attorneys in question, rather than with my office.

Q. So if there was a sample sent in somewhere around January, 1938, you would not know anything about it, would you? A. Not necessarily; I may or may not. I mean, I cannot answer that question directly Yes or No. I don't recall having seen a sample of Tu-Tone with the spots eliminated prior to this, attached to the letter.

Mr. Bierman: The witness refers to French Exhibit No. 1.

Q. You don't know where this January 28, 1938, date came from, do you, in this preliminary statement? A. I don't know anything about that, no, sir.

Q. Then, if you noticed, at the end of the affidavit,— A. I didn't read it properly, in detail.

Q. I will show you the end of the affidavit (handing document to the witness)—the paragraph which starts, "That on or about December 22, 1937, he first embodied the
216 invention," and so forth. Do you know anything about where those dates came from? A. No, I wouldn't know.

Q. So far as you know, they don't refer to anything that happened in this country? A. I would have to, naturally, examine correspondence about that time from England, to see if there was anything about it; but so far as I know now, I can say that it doesn't mean a thing to me.

Q. Have you been asked to look up anything about correspondence around that date? A. No, sir.

Q. Or about any of these dates that are referred to in this affidavit? A. No.

Q. You don't know where those dates came from? A. I don't know what it is all about, to be very frank about it.

Q. Do you think there would be anybody in this country who would know anything about the dates that are referred to in this affidavit? A. The attorneys may know; Mr. Bierman may know. There is some other correspondence that other attorneys may know.

Q. Do you have other attorneys that handle such matters, besides Mr. Bierman, in this country. A. Thomas French, Manchester, or Thomas French, America?

Q. I beg your pardon? A. Are you asking the question whether Thomas French in——

Q. Suppose you answer as to both. A. Well, Thomas French, America, has other attorneys; Thomas French, Manchester, also has other attorneys.

Q. In this country? A. Yes, sir.

Q. That handle patent matters? A. Yes, surely.

Q. Do you know whether those attorneys handled the subject matter of the Interference in which you are now testifying? A. I know that Thomas French, America's attorneys had nothing to do with it, and I don't know of Thomas French, Manchester, but I presume that they did not. That is all I can say.

Q. Who would the attorneys in America be who might know something about this? A. Well, I don't know
217 the names of the Thomas French, Manchester, attorneys, because that would be done through their British attorneys. In other words, it is not customary in England for the client to correspond direct with the attorneys; it is done through the British attorneys, who correspond with their American correspondents.

Q. Is there any other customer besides Mr. Goodell to whom you showed Exhibit 1? A. Oh, yes, many.

Q. How many do you suppose there were? A. Oh, well, it would be shown first in Cleveland; the afternoon of March 7 in Norwalk; the following day in Sturgis, Michigan; and the following day, the following two days, in Chicago. You are speaking, I presume, around about these dates?

Q. Yes. A. Yes.

Q. Would you name the individual to whom you showed it in each of those places? A. Yes, certainly.

Q. And the company with which he is associated? A. Surely. Mr. Wright, of the Guarantee Specialty Company in Cleveland; Mr. Davis and Mr. Stratton; Mr. Kirsch of the Kirsch Company in Sturgis, Michigan; and in Chicago it was shown to Unit Venetian Blind Supply, Chicago Venetian Blind.

Q. What individual? A. In the Chicago Venetian Blind?

Q. In both of them. A. Oh, in Unit, probably Hyman. You are asking me to be specific now. Mr. Hyman may not have been there. If he wasn't there, it would have been shown to Mr. Flentie. In Chicago, the Western Venetian

Blind Company, it was probably shown to Mr. Feinstein or Mr. Andrews. The sample was not taken (that is what I presume what you are asking) just to show to one company.

Q. Mr. Gibbons spoke about being in England in April, 1938, I believe. A. Yes.

Q. Were you with him at the time. A. No. I sent him over there with his wife for about five weeks, I think, from leaving the United States to getting back.

218 Q. When was the last time you were in England?

A. I think it was September—may I ask when the war started?

Q. September, 1939. A. I think I was there almost a year before.

Q. About September, 1938? A. Yes, sir. I returned in September; I was there in August, 1938.

Q. Nothing was said about the construction of Exhibit 1 to you while you were in England, was it? A. Nothing specifically, with this exception: since the inception of the American company, I recognized that Tu-Tone had vast possibilities, and was a very advantageous article, particularly for the American market, but the only objection was the spots showing through. Our competitors, Russell Manufacturing Company, had a Tu-Tone which was more of a painted affair on one side. We wanted a tape without any spots, and I have been advocating for six years—when I say "advocating," I mean in the course of conversation, both with technicians such as Mr. Gibbons, and Mr. Broughton in Manchester, and Mr. French, as to how they could manufacture it so as to do away with the "small-pox." A big objection that always came up would be the weakening of the straps.

Q. Did you know that a firm named Carr in England had one that didn't show through? A. I didn't know; this is the first time I have heard it.

Q. Do you know when the first hidden stitching of the cross straps was put on the market by your American con-

cern? A. It is hard to say, because after this sample came over, I asked Mr. Gibbons to get busy as quickly as possible to convert all the newer manufactured Tu-Tone tape with this principle. Of course, it was difficult to do, because we still had unfinished woven ladder web in the looms. Of course, when they ran out, then we would make the looms, or set the looms, in order to manufacture in this manner; but the exact date—as near as possible after the receipt of the samples: that is the best answer I can make to it.

219 "Q. What are 'tacklers'? A. English expression for loom fixers.

"Q. In this telegram that you received from J. S. Human, National Venetian Blind Company, he states, 'Hope further improvement can be made.'

"Do you know if any further improvement was made? A. Oh, yes, we made further improvement since then.

"Q. What were they? A. We have put a mingled back on Dekratape, instead of a plain basket weave back. In other words, we made a twill weave now; we are making Dekratape with a twill weave, whereas this is a plain weave.

"Mr. Bierman: Referring to French Exhibit 3."

Mr. Barlow. If you remember that, your Honor, it had a plain weave in the back and not a twilled weave.

The Court. Oh, yes.

Mr. Barlow. (Continuing reading:)

"Q. When did you do that? A. The first sample we made probably a year, year and a half ago.

"Q. Was it necessary to make that improvement before you got an order from— A. National?

"Q. National. A. No, sir.

"Q. Did you get an order from National in response to that sample? A. Yes, sir.

"Q. Where is it? A. The order?

"Q. Yes. A. I can get it for you. It has been finished and executed a long time ago.

"Q. Do you know when the date of it was? A. I could call up the office and find out for you. It came probably in the mail shortly after that.

220 "Q. The information contained in the first paragraph of Exhibit 18 was information you obtained from Mr. Gibbons, was it? A. Yes, sir.

"Q. And that was such as was conveyed to you in some of these letters that you identified here, Exhibits 4 and 7? A. Yes, that's right.

"Q. Do you know whether or not Canadian Venetian Shades had obtained any ladder web such as Exhibit 1 from your English concern? A. The only way I would know is the statement in the letter. I mean, I would

221 have no knowledge, direct knowledge. I wouldn't see the invoices. I don't know what is sent to Canada. The British company have an agent in Montreal.

Q. And is he supplied from the English company? A. Exclusively, yes, sir; occasionally we supply only as a matter of courtesy to help them out in emergencies.

Q. This letter, then, was more an information-seeking letter than it was in anticipation of a shipment? A. Yes, put it that way. These people were trying to obtain goods from us, figuring they could buy in smaller quantities than if they imported it direct from England.

Mr. Bierman: The question and answer referred to French Exhibit 19.

Q. Do you know about the date when that memo was typed on the top of Exhibit 21? A. I could swear that it was typed two or more days prior to my making the trip—prior to March 6, isn't it, when I left New York?

(The document was handed to the witness.)

A. (Continuing) Yes, prior to March 6, 1939.

Mr. Bierman: (To the Reporter) Will you read that answer in full?

(The Reporter repeated the answer referred to.)

Q. In Exhibit 22, one order is referred to of 42 gross of Tu-Tone tape; and in your letter of March 20, 1939, in

Exhibit 23, you refer to three orders. What are the other two orders? A. The probability is that it was for 14 gross of three different sizes of tape. We didn't retain the orders; we sent them back.

Q. Did you look for any other letters that referred to any other orders besides these? Did you find any other letters that referred to any other orders besides Exhibits 22 and 23. A. You mean from Bostwick-Goodell?

222 "Q. Yes. A. No, those are all the orders there were. We have been trying to interest them in handling Tu-Tone tape, and this was the result, and then, when they wanted the exact sample—in other words, they were using, I think, International Braid's standard tapes, and they wanted those matched. We couldn't match them, because our colors are not identical, and because I knew from past experience how these people question everything. I wanted to make absolutely sure that they understood what we were going to supply them before accepting the order.

"Q. Have you met Mr. Marshall, who testified for Mr. Colby in this Interference? A. I met Mr. Marshall, I think, in 1936, when I advertised for a superintendent of our mill. I interviewed him at the Biltmore Hotel. That is the only time I have ever seen him, and his name is just familiar; that is all I can say about him. I couldn't describe him.

"Q. Have you sent anybody to see him since he testified for Colby? A. No, sir.

"Q. Were you aware that somebody from your concern did call on him? A. No, sir, I had no knowledge.

"Mr. Barlow: Cross examination closed."

(Redirect examination on deposition was read by Mr. Bierman as follows:)

"Q. You were asked on cross-examination the names of the people to whom you showed French Exhibit 1 on your trip in March, 1939. I call your attention to French Exhibit 13, referring to the sample English made up.

223 What sample did you have reference to in this letter? A. Well, the only sample of a mottled cross strap which didn't show any binding-in was the sample, or portion of the sample, which England sent over to me.

"Q. You said a portion of the sample. What do you mean by that? A. It was either this sample or a portion of it.

"Q. Refer to the number. A. French Exhibit 1. I had a sample in my pocket. In fact, I intended to get busy with this shortly after I got the letter, but, as I say, unfortunately, when I got back on one of my trips from Fall River, I slipped, and broke ribs, and then was laid up for a couple of weeks.

"Q. I call your attention to French Exhibit 21, and particularly the typewritten memo which refers to a Tu-Tone having a new idea so that the cross strap threads do not show through. What did you have reference to when you made that statement? A. The sample which England sent me, naturally, French Exhibit No. 1. At that time, it is interesting to observe, at the foot of this memorandum I made a note. I said, 'Offer importd Tu-Tone at a price.'

"At that time we had some imported Tu-Tone, and I wanted to dispose of that at a figure, but Bostwick-Goodell weren't interested in that.

"Q. Was that of the old type where the specks showed through, or of the new type where the binding-in was concealed? A. No, there was no—at that time, when I called on Bostwick-Goodell, there was no new type, only
224 old type, whether it was made in England or whether it was made in America. I think I wrote a letter to Mr. Gibbons from Chicago that I showed it to the Kirsch Company in Sturgis.

"Mr. Bierman: Re-direct examination closed."

(Re-cross examination on deposition was read by Mr. Barlow as follows:)

"Q. Is that one of your sample cards (handing card to witness)? A. Yes."

That is Exhibit 47 they are talking about. I imagine that is here somewhere.

The Court. That is that cardboard?

Mr. Barlow. It is one just like that, I think (indicating an exhibit.)

(Continuing reading:)

"Q. With the tape on which the specks show through? A. Yes.

"Q. This is one of your—would you call it 'Sample card'? A. One of the old sample cards. I mean, it is not in existence now. We don't make anything like that now.

"Q. Did you make a change in your sample cards at the time you changed the 'small-pox' tape to the tape where it didn't show through? A. Not at the time, because
225 we sell primarily through distributors, and when this sample (referring to French Exhibit 1) came from England, I instructed Mr. Gibbons to make the change as quickly as he possibly could, but to say nothing about it. The purpose was to give our distributors an opportunity of unloading their old stocks, whereas, if we made announcement about it, the customers then would demand all tape like this, and not with the spots, and consequently the jobbers might get stuck with the tape they had on hand, and return it to us. So there was no noise, nothing said about it; it was not even mentioned in the advertising, or color cards, or anything else.

Q. Wouldn't you have run into competition with the International Braid, who had put it on the market? A. I saw International's on the market, yes, surely.

Q. In March, 1939? A. I wouldn't say when; no, I wouldn't say March, 1939, but I have seen it, naturally.

Q. But when you did run into that competition, then you told them you had the tape too? A. You must remember, we don't come in contact with actual manufacturers, or very few. Most of our business is done with distributors. Distributors knew what we were doing, and knew that part of their stocks had the tape as we were producing it without

the "small-pox," whereas some of the tapes, some of the stocks, would have it. They weren't saying much about it, but if a customer particularly objected, then the distributor would see that the customer got the latest.

Q. What would your answer be, then, to my question as to whether, if you came into competition with the International's tape, that didn't have the "small-pox," you would tell that person that you had the tape without the "small-pox," too? A. If that question came up, I would have probably told the distributor that he probably had some of that in stock already, and didn't know about it, because we had not told him, or made any noise about it, until we were able to give him an opportunity to dispose of his old stocks.

226 Q. And if it were a customer who didn't buy from you before, what would you have told him? A. If it was a customer that didn't buy from us? I don't know anybody that didn't buy from us before.

Q. You would then have told him that you had that kind of tape too, would you not? A. If it was a customer—now, we are not creating new customers; we are selling to distributors. I presume you differentiate between a manufacturer, when you say "customer", and—if a purchaser would write to us, the probability is we would refer him to a distributor. But I have no knowledge of any inquirer writing specifically about the elimination—writing to us, direct—a new customer, to answer you.

Q. When I speak of a customer, I speak of a man who purchases tape from you. A. Oh, a man who purchases tape from us. He probably knew about it. He would have no occasion to ask us, because we would have told him what we were doing.

Q. You don't want to answer that question, do you? A. Certainly, I will answer any question. I don't want to mislead you, by any means. I want to tell you the absolute facts, and I am not trying to quibble. No customer would ask us for this tape, because we have only a handful of customers, and we tell them what we are doing as we do it.

We don't have thousands of customers; we only have probably about thirty.

Q. And how long do you think it took you to tell the thirty people—we will say, after the fifteenth of March, or, say, after the first of March. A. After the sixth of March, when I first went out on the trip.

Q. All right. A. The probability is that people in New York nearby were told before the sixth of March, but after the sixth of March I would say—I don't think there is any doubt but that in four months' time, I figure, when I had gone out to the Pacific Coast, all my customers would have known about it. As I said, there are only about thirty.

227 "Q. Do you want to change that statement about the customers around New York being told before the sixth of March, you not even having shown it to Mr. Gibbons then? A. I didn't show it to Mr. Gibbons before the sixth of March.

Mr. Bierman. Before you proceed: That, I believe, is an error in the answer. There should have been a question mark after the answer. That is, "I didn't show it to Mr. Gibbons before the sixth of March?" is what he actually said.

Mr. Barlow. (Continuing reading:)

"Q. Would you have shown it to your customers around New York before you showed it to Mr. Gibbons? A. No, I don't think so.

"Q. So, it was after you showed it to Mr. Gibbons? A. Yes, surely.

"Q. That you started to tell people about it? A. That's right.

"Q. Were you figuring you could get that from England? A. No, although at that time we were importing as well; but we were primarily interested in manufacturing in the United States.

"Q. You didn't even know on the sixth of March that Mr. Gibbons could make it, did you? A. On the sixth of March?

"Q. You hadn't even tried it? A. Mr. Gibbons knew he could make it when he saw the sample, but he questioned on what loom it had been made.

"Mr. Barlow. I will offer in evidence this sample
228 card identified by the wtness as Colby's Exhibit 47."

(Sample card marked on deposition as Colby Exhibit 47, was received in evidence.)

* * * * * * * * * *

229 *Deposition of Theresa E. Donovan*

Theresa E. Donovon—

Direct Examination

By Mr. Bierman:

Q. Will you please state your full name? A. Theresa E. Donovan.

Q. Where do you reside? A. Brooklyn; 145 Berkeley Place.

Q. Brooklyn, New York. A. Brooklyn, New York.

Q. What is your occupation? A. Secretary to Mr. John D. Harris.

Q. For how long have you been secretary to Mr. Harris? A. Five and a half years.

Q. Will you briefly outline your duties? A. Taking dictation from Mr. Harris, taking orders, writing the more simple letters regarding orders, and office routine.

Q. Do you have charge of the mail, either incoming or outgoing? A. Yes.

Q. Have you had charge of this mail during your entire period of employment with Mr. Harris? A. Yes.

Q. I call your attention to a series of letters which are marked in evidence as French Exhibits 4 to 9 inclusive, and ask you whether you can identify the same, either as to date of receipt or date of sending, as the case may be? You may take each letter individually, if you so desire, and refer to

the exhibit number written in ink. A. I do remember reading this letter when it reached the office.

Q. That is, French Exhibit 4? A. Exhibit 4. I also remember French Exhibit 5, French Exhibit 6, French Exhibit 7, French Exhibit 8, and I recall writing French Exhibit No. 9.

Q. Will you state which of these exhibits were written by you? A. French Exhibit No. 9. It was dictated by Mr. Harris, and I wrote it.

230 Q. Are there any other letters in this group which were dictated to you? A. And French Exhibit No. 5, French Exhibit No. 6 and French Exhibit No. 8.

Q. I call your attention to French Exhibit No. 14, and ask you whether you have seen this letter before? A. Yes, I have.

Q. Will you state approximately when you first saw this exhibit? A. About the third or fourth of February, 1939.

Q. How do you know that it was about that time? A. Well, I do know that at that time we were using the fast boats for mail—the "Queen Mary," the "Normandie," the "Rex," "Bremen,"—and it certainly didn't take any more than five or six days for those boats to get here, and for the mail to be delivered.

Q. And you saw this letter immediately upon its being delivered? A. Yes, I did.

Q. The letter refers to a sample of Tu-Tone tape. Do you recall whether there was a sample of such tape with the letter? A. Yes, there was.

Q. I call your attention to a number of samples of tape on the desk before me. Can you pick out a sample which, according to your recollection, was attached to this letter? A. Yes, I can.

Q. Will you please do so? A. (Witness indicates sample.)

Q. You refer now to the sample marked— A. French Exhibit 1.

Q. Is there any indication that this sample was actually attached to the letter itself? A. Just this clip mark.

Q. That is, there is a clip mark at the uper left-hand side of the letter? A. Yes.

Q. By which the sample was attached to the letter? A. Yes.

Q. I call your attention to a memorandum identified as French Exhibit 15, and ask you whether you can identify this? A. Yes, I can.

231 Q. Will you state who wrote it, and when. A. I wrote it on February 27, 1939.

Q. What did you do with it after you wrote it? A. I gave it to Mr. Harris.

Q. For what purpose? A. To take to Fall River with him. It is just memoranda that he gives me throughout the day before he goes to Fall River, and I type them up at the end of the day and give him the memorandum.

Q. I call your attention to French Exhibits 16 to 20, inclusive, and ask you whether you can identify each of the documents contained therein? A. I can identify French Exhibit 16.

Q. In what manner can you identify it? A. Well, I took it in dictation from Mr. Harris, and wrote it.

Q. On the date given? A. On the date given.

Q. And was it mailed on that day? A. Yes, it was. French Exhibit No. 17, I also identify.

Q. In what way? A. Well, only in so far as I read it when Mr. Harris showed it to me. It was delivered to Mr. Harris at Larchmont, and he brought it to the office, and then I read it.

I recognize this letter, French Exhibit 18, because I wrote it, and remember writing it.

Q. And did you mail it? A. Yes. This Exhibit No. 19 I also remember receiving; and Exhibit No. 20—I made that up for Mr. Harris before he left on his trip.

Q. I now call your attention to French Exhibits 21, 22 and 23, and ask you similarly whether you can identify

these. I might say that these exhibits each consist of more than one letter. A. This letter, Exhibit 21, I identify. I wrote this letter.

Q. That is the letter dated— A. January 6, 1939; and also the letter from Bostwick——

Q. Dated what? A. January 5. I can also identify French Exhibit No. 22, letter dated March 11, 1939.

232 "Q. You having received that letter? A. Yes; and also March 10, 1939.

"Q. There is a third letter as part of that exhibit. A. Also March 13, 1939. I wrote the letter.

"And did you mail it? A. Yes.

"Q. Now, as to Exhibit 23. A. I can identify that letter, March 15, 1939; and I wrote this letter, March 20, 1939.

"Q. You recall having received the letter of March 15, 1939, and you wrote the reply on March 20, 1939? A. That is right.

"Mr. Bierman. Direct examination closed."

(Cross examination on deposition was read by Mr. Barlow as follows:)

"Q. How often did you get samples of tape, material, with letters, that is, attached to letters, incoming to your office? A. From anyone, particularly?

"Q. Anybody at all. A. Anybody at all?

"Q. Yes. A. I should say almost daily.

"Q. And if those samples were spread out on the table, do you think you could pick them all out? A. Could I pick them out?

"Q. Yes. Say we had 300 samples laid out on the table here for the 300 days in the year, and you had the letters separately. Could you pick out the samples that went with each letter, and put them in the correct order? A. If I were allowed to read the letters, I dare say I could.

233 "Q. Do you know who prints the sample cards that are used by Thomas French & Son? A. Yes.

"Q. Such as Colby Exhibit 47? A. Yes.

"Q. Who does? A. E. Feibusch & Company in New York.

"Q. How long have they printed sample cards for you folks? A. I don't know exactly, but I think it is about five years.

"Q. Do you use anybody else for sample cards? A. No.

234 Q. Do you know if they assemble cards completely, such as Exhibit 47? A. If they assemble them completely?

Q. Yes. A. I don't know.

Q. Do they deliver cards directly to your New York office? A. Yes.

Q. And do they come in like Exhibit 47? A. Yes.

Q. That sample card that I just showed you had spots showing through, did it not, on the tape? A. Yes.

Q. Do you know when Tu-Tone tape with such spots as that showing through first was put on the market by Thomas French & Sons in America? A. No, I can't say that I do.

Q. Was it on the market when you came to work for Mr. Harris? A. When I came to work for Mr. Harris we weren't manufacturing in America.

Q. You were not manufacturing. A. No, we were importing from England.

Q. Do you remember importing any tape with the spots showing through like that, at the time you came to work for Mr. Harris? A. I remember importing Tu-Tone tape, but I cannot say that the spots—whether or not the spots showed through.

Q. And was it called Tu-Tone tape when you came to work for Mr. Harris, and you were importing it? A. I am not exactly sure, because Tu-Tone sticks in my mind, because we call it that now. No, I can't answer that definitely.

Q. Do you remember it having ever been called anything besides Tu-Tone? A. No, I can't remember any other name.

Mr. Barlow: That is all.

Mr. Bierman: Just one question.

235 (Redirect examination on deposition was read by Mr. Bierman as follows:)

"Q. Do you ever recall using the name 'Duplex tape' for what you now call 'Tu-Tone tape'? A. We did not use that name in the New York office. That was used in the mill, in Fall River.

"Mr. Bierman. That is all."

(Recross examination on deposition was read by Mr. Barlow as follows:)

"Q. How do you know that? A. Because I think that we have a letter on file in the New York office, instructing the mill to discontinue the use of 'Duplex tape,' because it was not the right name of the tape. They took it upon themselves to call it that."

* * * * * * * * * *

Deposition of Roger French.

Roger French—

"Q. 1. State your name, age, residence, occupation and relationship to George F. French. A. Roger French.
236 39 years. 'Herries', Barrow Lane, Hale, Cheshire, England. Managing Director of Thomas French and Sons Limited of Manchester, England. Webbing manufacturers. Son of George Frederick French.

"Q. 2. Have you read the application of George F. French, Serial No. 281,228, filed June 26th, 1939, and, if so, do you understand the construction of ladder web described therein? A. Yes, I have read the application of George Frederick French, Serial No. 281228, filed June 26, 1939, and I do understand the construction of ladder web described therein.

"Q. 3. Have you read the counts or claims involved in the present action, and, if so, do you understand them? A. Yes, I have read the counts or claims involved in the present action, and I understand them.

"Q. 4. Did George F. French disclose to you the subject matter of the application identified in interrogatory #2, and, if so, when did he disclose the same to you?"

Mr. Barlow. I object to that as immaterial. There is no materiality of any disclosure made outside the limits of the United States.

The Court. All right. Overruled for the present.

Mr. Bierman. I think I ought to number these as I go along, because there are references to interrogatory numbers.

Will the reporter number them 1, 2, 3 and 4, the last one being 4.

(Continuing reading:)

"A. 4. Yes, George F. French disclosed to me the
237 subject matter of the Application, Serial No. 281228, prior to my trip to the United States in January 1938.

"Q. 5. Did you take a trip to the United States in 1938? A. Yes, I took a trip to the United States at the end of January 1938, leaving on January 26th in the s.s. Berengaria.

"Q. 6. If the answer to interrogatory #5 is in the affirmative, did you disclose the aforesaid invention to any individuals in the United States, and, if so, give the names and approximate dates. A. Yes, I disclosed the said invention to John D. Harris of the firm of Thomas French and Sons Limited of New York City, soon after my arrival in the United States in February 1938.

"Q. 7. If the answer to interrogatory #5 is in the affirmative, state the dates when you arrived in the United States and when you returned to England. A. I arrived in the United States early in February 1938 and returned to England on March 14, 1938, in the s.s. Queen Mary.

"Q. 8. What was done, to your personal knowledge, in producing ladder web in accordance with the invention of the application for patent as set forth in interrogatory #2?"

Mr. Barlow. The same objection, your Honor.

The Court. Overruled.

Mr. Bierman. If your Honor please, I might say that we went through this already when I made my mo-
238 tion for appointment of the Commission, and the Court issued an order granting the permission to take the depositions on these interrogatories, which constituted part of the motion.

The Court. It is all a question of law, anyway. If I hold that it is immaterial whether or not he disclosed the invention to anyone in England or whether or not they began to manufacture this ladder web and reduced it to practice, it does not make any difference whether it is in the record or not. If the law is that it cannot be taken into consideration by the Court, it is immaterial. If the law is that it can be taken into consideration, it is material.

Mr. Barlow. I do not think the matter he just brought up has anything to do with the case, though. Whether they grant the commission or not, doesn't permit the answers to questions, or whether they are material.

The Court. Well, I will let it in. There is a lot I don't know about this patent business. It may be material and it may not. I shall have to determine it when I get into the law a little bit.

What was the question?

Mr. Barlow. Could I have a running objection, then, right through?

The Court. Oh, yes.

Mr. Bierman. The question was 8:

"What was done, to your personal knowledge, in producing ladder web in accordance with the invention of the application for patent set forth in interrogatory # 2? A. The ladder web according to this application was
239 first produced by Spencer Broughton (known as Sam Broughton) and his chief assistant weaver, Mathias Stephenson, to the instructions of George F. French and was made in a sample ladder web loom with the shedding motions suitably varied.

"Q. 9. Was ladder web according to the invention of application Serial No. 281,228 produced, and, if so, state approximately when. A. Yes, ladder web according to the invention as set forth in application, Serial No. 281228, was produced about the middle of April, 1938.

"Q. 10. If the answer to interrogatory #9 is in the affirmative, state by whom it was produced, where, and whether it was tested and the results of such tests. A. The ladder web was produced by Spencer Broughton (known as Sam Broughton) and his chief assistant weaver, Mathias Stephenson, at Chester Road Mills, Manchester, England, and was duly tested by the said Spencer Broughton with satisfactory results.

"Q. 11. Did you send a piece of ladder web made in accordance with application Serial No. 281,228 to the United States in 1939, and, if so, give the circumstances, in detail. A. Yes, a piece of the ladder web made in accordance with Application Serial No. 281228, was sent by my firm to the United States on January 27, 1939, addressed to Thomas French and Sons Limited, of 620 Fifth Avenue, New York City.

"Q. 12. Did you send a letter dated January 27th, 1939, letter #600, directed to Thomas French & Sons, Ltd., New York City, attention Mr. Harris, and, if so, state the date when the letter was written by you and mailed, the details of said letter, and attach a copy thereof to your answer, marking said copy 'French Exhibit 14A.' A. A letter dated January 27, 1939, was also sent with the piece of ladder web referred to in interrogatory No. 11 hereof and said letter was dictated by me and mailed about January 27, 1939, to Thomas French and Sons Limited, 620 Fifth Avenue, New York City, for the attention of Mr. J. D. Harris. A copy of the letter is hereto attached marked 'French Exhibit 14A'.

"Q. 13. If the answer to"——

Mr. Barlow. That letter——

Mr. Bierman. This is it here (indicating).

Mr. Barlow. It does not appear to be a carbon copy, and it does not seem to me—

The Court. Well, it is immaterial. The original is already in evidence.

Mr. Bierman. (Continuing reading:)

"Q. 13. If the answer to interrogatory #12 is in the affirmative, identify 'Mr. Gibbons' and give a full explanation of sentences 4 and 5 of said letter. A. Mr. Gibbons was the mill manager at the mills of Thomas French and Sons Limited of the United States, situated at Fall River, Massachusetts. In explanation of the sentences 4 and 5 of the letter dated January 27, 1939, I would say that

241 In the case of the two-color ladder webbing made before the invention referred to in interrogatory 2 hereof, the warps of each cross tape were all the same color and in binding in the said cross tapes they showed through and left 'specks' on the surface of the banding of a different color. To avoid such fault, two lots of cross tape warps in different colors were provided, one lot of a color matching that of one banding and the other lot of a color matching that of the other banding, and in binding in the cross tapes only those of one color were fully bound into the banding of corresponding color whilst the warps of the opposite color were simply bound to the inner faces of the bandings. Although the bindings in were not quite as firm as when all the warps were bound into each banding, the connection were quite adequate.

"Q. 14. If the answer to interrogatory #11 is in the affirmative, attach to your answer a piece of ladder web similar to that mentioned in said interrogatory and made at the same time as the piece sent by you to the United States, if such an additional piece is available. Mark the same 'French Exhibit 1A'. A. A piece of ladder web similar to that mentioned in interrogatory No. 11 and made at the same time as the piece sent to the United States on January 27, 1939, is attached hereto marked 'French Exhibit 1A'.

"Q. 15. Did you receive a letter dated March 23rd, 1939, letter #736, sent by Thomas French & Sons, Ltd. of New York City to you, and consisting of three pages, said letter being signed by John D. Harris, and, if so, give the
242 date when you received said letter and state in whose possession it has been up to the present. A. I duly received a letter dated March 23, 1939, No. 736, sent by Thomas French and Sons Limited of New York City, and consisting of three pages, and said letter signed by John D. Harris, received by me about March 30, 1939, and being in the possession of my firm up to the present time.

"Q. 16. If the answer to interrogatory #15 is in the affirmative, attach said letter to your answer and mark the same 'French Exhibit 18A.' A. The said letter is hereto attached marked 'French Exhibit 18A'."

Do you wish to see it.

Mr. Barlow. I think I saw it.

Mr. Bierman. (Continuing reading:)

"Q. 17. If the answer to interrogatory #11 is in the affirmative, state whether you sent any other pieces of ladder web, made in accordance with application Serial No. 281,228, to the United States before March 30th, 1939. A. No other pieces of ladder web made in accordance with application, Serial No. 281228, were sent to the United States before March 30, 1939.

"Q. 18. Is Thomas French & Sons, Ltd., a corporation of England, the owner of the invention of application Serial No. 281,228? A. Thomas French and Sons Limited, a Corporation of England, is the owner of the invention
243 of Application, Serial No. 281228."

Now, there are some cross-interrogatories.

Mr. Barlow. Do you want me to read those?

Mr. Bierman. You might as well. Give me a rest.

(Cross-examination on deposition was read by Mr. Barlow as follows:)

"Q. 1. If on direct examination your answers to interrogatory No. 4 indicated a disclosure was made to you please state whether the disclosure was oral or written or illustrated and if oral relate substantially what was stated to you. If there were any physical illustrations or written memoranda which were shown to you at the time of this disclosure submit such memoranda or illustration and if this was not in existence then describe accurately what was on such memoranda or shown by the illustration. Was any piece of fabric embodying this invention shown you at the time of this disclosure? A. The disclosure was entirely oral, since the invention was easy to understand by me with my intimate knowledge of the manufacture of ladder webbing. The known fault of multi-colored webbing was referred to, i.e. the presence of 'specks' on the outer surface of the webbing caused by the cross-tape warps of different color showing through, and the advantages of multi-colored ladder webbing in which there were no 'specks' were stressed. There were no pieces of ladder webbing produced at that time embodying the invention.

"Q. 2. If on direct examination your answer to
244 interrogatory No. 6 states any names in addition to the name of the individuals in the United States, state his address and if employed by whom employed. Also state precisely what was disclosed and how the same was disclosed. A. I do not remember disclosing the invention to any person other than John D. Harris on my visit to the United States in 1938."

He didn't answer that.

The Court. 1938. I thought it was '39.

Mr. Barlow. It says here 1938. He didn't answer that question, you see. I asked him to state precisely what was disclosed, and all he said is, he disclosed it to John D. Harris.

The Court. That is the only person he disclosed it to, he said.

Mr. Barlow. That is right. He didn't say what he disclosed, though.

The Court. Well, I don't know what you want me to do about it.

Mr. Barlow. He refuses interrogatories.

(Continuing reading:)

"Q. 3. If on direct examination your answer to interrogatory No. 8 or interrogatory No. 9 indicates any acts in producing ladder web, state precisely in what country any act which you allege in answer to this question occurred. Was a chain draft produced and if so who drew the chain draft, giving his name and address, and if such chain draft is in existence and dated produce it and attach
245 it to your answers marked 'French Cross Exhibit 24'. A. The ladder webbing referred to in my answer to Interrogatory No. 8 or Interrogatory No. 9 was produced at the Mills of Thomas French and Sons Limited, Chester Road, Manchester, England. No formal chain draft was to my knowledge produced as none was considered necessary.

"Q. 4. If on direct examination your answer to interrogatory No. 9 is in the affirmative, then state the source of your information and original disclosure to you and the first production of a ladder web of this invention as answered to this question. When was a ladder web of the construction here referred to first placed on the market? Produce records showing sales. If this date of first marketing precedes April, 1939, state why there was a delay until April, 1939, to file a patent application in Great Britain. A. The samples of ladder webbing named in my answer to Interrogatory No. 9, were first shown to me about the middle of April 1938 by Spencer Broughton (known as Sam Broughton). The said ladder webbing was first placed on the market about the summer of 1939, but no precise particulars can be given of quantities or dates of sales."

And he entirely omitted why he didn't put it on the market for that full year.

(Continuing reading:)

"Q. 5. If on direct examination your answer to in-
246 terrogatory No. 11 is in the affirmative state why you delayed for several months in sending a piece of the ladder web to the United States. To whom did you expect the information concerning this ladder web to reach in the United States other than Mr. Harris to whom your letter was addressed? Did you not expect the information would be transmitted to Mr. Gibbons who had to do with your production in the United States? Why did you not disclose this invention to Mr. Gibbons when he was in England at your factory in April, 1939? A. The delay was due to the small demand for two-color ladder webbing in Great Britain, and because we (my firm) did not realize that there was such a demand for the same in the United States. We (my firm) expected the information to reach Mr. Gibbons as soon as production at our Fall River Mills was intended, and also Mr. H. C. Bierman, our United States Associate Patent Attorney of New York. The invention was not disclosed to Mr. Gibbons when he visited England in April 1938, partly because, as already stated, he was at that time a comparatively new employee, and also partly because my firm had not then fully realized the possibilities of the invention and in particular the demand for such a product in the United States of America.

"Q. 6. If on direct examination you answer to interrogatory No. 18 is 'No', state who now has title to the invention. If your answer shows title in someone other than the inventor, attach copies of such written documents as
247 form a basis of your answer. A. The invention is the property of Thomas French and Sons Limited, Manchester, England. No written documents support this title beyond the fact that the corresponding British Application was filed in the joint names of the company and the

inventor, who, as Governing Director of the company, is automatically trustee for the company as regards any of his inventions."

I might say that the assignment records here in the United States show that the title to the invention is in George French and Roger French, and not in the firm, and they are the ones that I directed this suit against, and they were admitted in our pre-trial stipulation to be the owners of the patent application.

The Court. I suppose I shall have to consider them as the owners, then, if they stipulated that.

Mr. Barlow. Yes, but this question here—

The Court. Well, I will say he didn't know what he was talking about, wasn't advised about the situation. I don't know.

Mr. Bierman. I don't know that it is material here. I have stipulated that the two individuals, George Frederick French and Roger French, are the owners, and I am willing to stand on it even though they say that there is some sort of trust agreement, an oral trust, whereby the beneficial title is held for the corporation, the British corporation.

Mr. Barlow. That is all right with me, then. I just didn't want that question coming up.

The Court. Legal title might be vested in them and they still be trustees.

248 Mr. Bierman. Yes.

* * * * * * * * * *

Deposition of George F. French

George Frederick French—

"Q. 1. State your name, age, residence and occupation. A. George Frederick French, 65 years. 'Brackenhurst' Rappax Road, Hale, Cheshire, England. Governing Director of Thomas French and Sons Limited, of Manchester, England. Webbing Manufacturers.

"Q. 2. Have you read the application of George T. French, Serial No. 281,228, filed June 26th, 1939, and, if so,

do you understand the construction of ladder web described therein? A. Yes, I have read the application of George T. French, Serial No. 281,228, filed June 26, 1939, and I fully understand the construction of ladder web described therein.

"Q. 3. Have you read the counts or claims involved in the present action, and, if so, do you understand them? A. Yes, I have read the counts or claims involved in the present action and I fully understand them."

Mr. Barlow. I have the same running objection to this, as to the materiality.

The Court. All right.

Mr. Bierman (continuing reading:)

"Q. 4. Are you the inventor of the subject matter of application Serial No. 281,228, and, if so, approximately when did you conceive the invention? A. Yes, I am the inventor of the subject matter of Application Serial
249 No. 281,228, and I conceived the invention in December 1937.

"Q. 5. Did you disclose the invention of application Serial No. 281,228 to Roger French, and, if so, approximately when? A. Yes, I disclosed the invention the subject of the said application, Serial No. 281,228, to Roger French early in January 1938.

"Q. 6. Did Roger French make a trip to the United States in 1938, and, if so, give the approximate date thereof. A. Yes, Roger French made a trip to the United States in 1938, leaving England about the end of January 1938 in the S.S. Berengaria.

"Q. 7. Did you discuss the invention of application Serial No. 281,228 with Roger French after his return from the United States, and, if so, give the approximate date of the discussion. A. Yes, I discussed the invention the subject of Application Serial No. 281,228, with Roger French on his return to England in the S.S. Queen Mary about March 14, 1938.

"Q. 8. Did you disclose the subject matter of application Serial No. 281,228 to Sam Broughton, and, if so, give the approximate date thereof. A. Yes, I disclosed the subject matter of the application, Serial No. 281,228, to Spencer Broughton (known as Sam Broughton) early in April 1938.

"Q. 9. Did you instruct Sam Broughton to make
250 ladder web in accordance with the invention of application Serial No. 281,228? A. Yes, I instructed Spencer Broughton (known as Sam Broughton) to make ladder web in accordance with the invention of application, Serial No. 281,228.

"Q. 10. If the answer to interrogatory #9 is in the affirmative, did Sam Broughton make such ladder web and did he exhibit it to you and to Roger French? A. Yes, Spencer Broughton (known as Sam Broughton) made or had made with the help of his chief assistant weaver, Mathias Stephenson, the ladder web as instructed and showed the same both to me and Roger French.

"Q. 11. If the answer to Interrigatory #10 is in the affirmative, state approximately when this ladder web was exhibited to you? A. All the ladder web was exhibited to me about the middle of April 1938.

"Q. 12. If the answer to Interrogatory #10 is in the affirmative, was such ladder web tested, and, if so, by whom, and what were the results of the tests? A. Yes, the ladder web was duly tested by Spencer Broughton (known as Sam Broughton) in my presence and the results were satisfactory.

"Q. 13. If the answer to interrogatory #10 is in the affirmative, state to whom the pieces of ladder web were given by Sam Broughton. A. The pieces of ladder web were given by Spencer Broughton (known as Sam Broughton) to Roger French.

"Q. 14. If the answer to Interrogatory #9 is in
251 the affirmative, attach hereto a piece of said ladder web and mark the same 'French Exhibit 1c.' A. A

piece of ladder web similar to and only different in color from that mentioned in Interrogatory No. 9 is attached hereto marked 'French Exhibit 1C'."

Do you wish to see that ladder web?

Here are the cross-interrogatories (indicating).

(Cross examination of deposition was read by Mr. Barlow as follows:)

"Q. 1. If on direct examination your answer to interrogatory No. 5 indicates an affirmative, state how you disclosed the invention to Roger French? If orally, state approximately what you told him? If by sketches or written description, produce the same or if not available then a duplicate thereof prepared as close as you are able from memory. Did you show him a piece of the tape at this time. A. I disclosed the invention to Roger French orally, there being no written description or sketches, as the invention was easy of understanding to him as an expert in the art. I reminded him of the 'speck' effect of the bound-in warps in a two-color ladder webbing and explained my proposal for using two-color warps in the cross tape and for arranging the binding-in so that the warps of color opposite to that of each banding would only be bound to the inner surface thereof whilst those of the same color were to be fully bound in. I did not show him a piece of the new webbing, as the same had not then been produced.

"Q. 2. If on direct examination your answer to
252 interrogatory No. 6 is in the affirmative, state upon what facts you base the answer to this question. A. The answer to Interrogatory No. 6 is based on the fact that with my knowledge and approval as Governing Director of Thomas French and Sons Limited, Roger French visited the United States of America on behalf of the firm and booked his passage with the American Express Company, Liverpool, England, to the United States about the middle of January on the s.s. Berengaria, State Room C.330.

"Q. 3. If on direct examination your answer to interrogatory No. 7 is in the affirmative, state what you said to Roger French. Have you ever been in the United States since the conception of your invention? A. After his return I again drew Roger French's attention to the then existing 'speck' effect fault of two-colored ladder webbing, and explained as stated in Interrogatory No. 1 above, how I proposed by using cross-tapes composed of warps of the two colors and binding the warps of the opposite colors to the inner faces only of the outer bandings, the fault of 'specks' showing on the outer face of the bandings could be overcome. No, I have not visited the United States since the conception of the invention, owing chiefly to war restrictions and war production activities on this side of the Atlantic.

"Q. 4. If on direct examination your answer to interrogatory No. 8 is in the affirmative, state what you recall as closely as possible that you said to Sam Broughton. A.

In directing Spencer Broughton (known as Sam
253 Broughton) to produce the first sample of the new ladder webbing, I explained the fault of the known two-color webbing and my invention for the use of cross-tapes composed of two lots of warps of the two colors, one lot matching the color of one outer banding and the other lot matching the color of the other out banding, and for binding the warps of opposite color to the inner faces only of the bandings. The required alterations in the shedding motion were also briefly discussed and these were radily appreciated by Spencer Broughton. No chain draft was then prepared or considered necessary.

"Q. 5. If on direct examination your answer to interrogatory No. 10 is in the affirmative, did you see Sam Broughton make such ladder web? Did you draw the chain draft yourself for such ladder web and if not who did? Did you see the ladder web tested? State exactly the test procedure if you did see it. A. I do not specifically recall seeing the ladder webbing being made by Spencer Broughton (known

as Sam Broughton), although I must have done so in my daily rounds in the factory. No, I did not draw the chain draft myself and as far as I know none was prepared or considered necessary. If there was one, it would have been drawn by Mathias Stephenson, the chief assistant weaver. I saw the ladder webbing tested and the test consisted in subjecting the cross-tapes to manual tension, and noting their resistance to separation from the bandings under such tension.

"Q. 6. If on direct examination your answer to
254 interrogatory No. 13 is in the affirmative, did you see Sam Broughton give pieces of ladder web? A. I cannot say from memory that I actually saw Spencer Broughton (known as Sam Broughton) give the pieces of ladder webbing to Roger French, as stated in answer to direct Interrogatory No. 13, but it would devolve on Spencer Broughton alone to do so."

* * * * * * * * * *

Deposition of Spencer Broughton

Spencer Broughton—

"Q. 1. State your name, age, residence, occupation and relationship to George F. French. A. Spencer Broughton (known as Sam Broughton), 60 years, 17 Yew Tree Lane, Northenden, Cheshire, England, Mills Manager and Weaver and Factory Superintendent to Thomas French and Sons Limited, Manchester, of which George F. French is Governing Director. No other than business relationship.

"Q. 2. Have you read the application of George F. French, Serial No. 281,228, filed June 26th, 1939, and, if so,
do you understand the construction of ladder web
255 described therein? A. Yes, I have read the application of George F. French, Serial No. 281,228, filed June 26, 1939, and I fully understand the construction of the ladder web described therein."

Mr. Barlow. I would like the same running objection through this deposition.

The Court. All right. Overruled.

Mr. Bierman (continuing reading:)

"Q. 3. Have you read the counts or claims involved in the present action, and, if so, do you understand them? A. Yes, I have read the counts or claims involved in the present action and I fully understand them.

"Q. 4. Did George F. French disclose to you the subject matter of the application identified in interrogatory #2, and, if so, when did he disclose the same to you? A. Yes, George F. French disclosed the subject matter of the application identified in Interrogatory No. 2, and the date of such disclosure was early in the month of April 1938.

"Q. 5. Did George F. French instruct you to make pieces of ladder web conforming with the invention set forth in application Serial No. 281,228? A. Yes, George F. French instructed me to make pieces of ladder web conforming with the invention set forth in Application, Serial No. 281,228.

"Q. 6. If the answer to interrogatory #5 is in the affirmative, state whether you produced such pieces of ladder web, and, if so, give the date thereof. A. I produced the pieces of ladder web named in Interrogatory No. 5
256 about the middle of April 1938.

"Q. 7. If the answer to interrogatory #6 is in the affirmative, state whether you tested such pieces of ladder web, and, if so, state the results of your tests and the approximate date of such tests. A. The result of the tests made on the said pieces of ladder web was satisfactory and the tests were made soon after the pieces were produced in early April 1938.

"Q. 8. If the answer to interrogatory #6 is in the affirmative, state whether you gave such pieces of ladder web to Roger French, and, if so, approximately when? A. The said pieces of ladder web were handed by me to Roger French soon after they were produced in early April 1938.

"Q. 9. If the answers to interrogatories #6 and #7 are in the affirmative, state whether you, yourself, did all of

the work or whether you had an assistant; if the latter, state the assistant's name.

"A. 9. The said pieces of ladder web were produced under my supervision with the help of my chief assistant weaver, Mathias Stephenson.

"Q. 10. If the answers to interrogatories #6 and #7 are in the affirmative, attach hereto a piece of ladder web made as stated in said interrogatories, if it is available, and mark the same 'French Exhibit 1B'. A. 10. A piece of ladder web similar to and only different in color from that mentioned in Interrogatories Nos. 6 and 7 is attached hereto marked 'French Exhibit 1B'."

257 Mr. Bierman. Do you wish to see it?

(Cross examination of deposition was read by Mr. Barlow, as follows:)

"Q. 1. If on direct examination your answer to interrogatory No. 4 indicates a disclosure state where George French disclosed the invention to you. Had you previous to receiving disclosure from George French learned of ladder web woven to accomplish the objects of this invention? If so, from whom, where and when? From whom did George French learn of the invention and upon what do you base the answer to this question? Since having knowledge of the invention have you ever been in the United States? Did you ever yourself while in the United States disclose the invention to anybody? If so, state the name and address of each person, and precisely what the disclosure consisted of. A. The invention was disclosed to me by George Frederick French at the mills of Thomas French and Sons Limited, situated at Chester Road, Manchester, England. The invention was new to me, and I had no knowledge of any previous ladder webbing woven to accomplish the objects of the invention. At the time George Frederick French stated that he was the inventor and I am not aware that George Frederick French learned of the invention from anyone. I believe him to be the original

inventor, and I base my reply thereon. I have not been to the United States of America since I had knowledge of the invention, so that I did not disclose and could not have disclosed the invention when I was in the United States.

258 "Q. 2. If on direct examination your answer to interrogatory No. 5 indicates that instructions were given, state in detail the instructions given you by George French. A. When George Frederick French instructed me on the invention, I was reminded of the ordinary make of two-color ladder webbing having warp 'specks' on the outer surfaces of the webbing, due to the cross-tape warps being all one color, and I was informed by him of his proposal to make the cross-tapes of two colors of warps, and to bind the warps of opposite (different) colors to the inner surfaces only of the outer bandings. It was clear to me how this could be done, and the necessary variations in shedding were briefly discussed. No chain draft was considered necessary for such a variation.

"Q. 3. If on direct examination your answer to interrogatory No. 9 states the name of an assistant in addition to giving the name of the assistant give his address and place of employment and precisely what acts of assistance he furnished. A. The name and address of the person who assisted in the production of the ladder webbing is as follows: Mathias Stephenson, of 8 Russel Avenue, Sale, Cheshire, England, he being my firm's chief assistant weaver at Chester Road Mills, Chester Road, Manchester, England. He gave directions on my instructions to the tacklers for 'gaiting up' the loom for the production of the webbing according to the invention."

Mr. Bierman: I offer in evidence the depositions of George Frederick French, Roger French, and Spen-

259 cer Broughton, together with all of the papers attached thereto, including the various physical exhibits.

The Court. All right. Let them be admitted in evidence.

Mr. Bierman. Exhibit 27.

(Document, depositions of George Frederick French, Roger French, and Spencer Broughton, and attached papers, was marked French Exhibit No. 27 and received in evidence.)

* * * * * * * * * *

III.

EXHIBITS.

French Exhibit No. 14.

Docket Division U. S. Patent Office Oct 15 1941
Filed May 1 1944 Charles E. Stewart, Clerk

Blackfriars 1887 (8 Lines). Order Dpt. Blackfriars 5271 (2 lines)

Telegrams & Cables: "Ladders" or Rufflette"

THOMAS FRENCH AND SONS LIMITED
Governing Director: G. F. French.

Managing Director: R. French

Chester Road Mills, Manchester, 15

CA 15798 4/25/41 LG

Please Quote Reference
R. F. Letter No. 600

Thos. French & Sons Ltd.
620 Fifth Avenue
New York City

Friday 27
January
1939

Gentlemen: Attention Mr. Harris

One of the troubles with 2-tone ladder web has been the speck marks where cross and body tapes of different colour join together.

Two of our tacklers have just overcome this difficulty—see sample enclosed. Mr. Gibbons will easily be able to solve the technical side of it. You will see that the cross tape is in both colours of which only the appropriate one

is bound into each body. The strength of binding is not quite as much as before, but quite adequate.

Yours truly

THOMAS FRENCH & SONS LTD.
By R F
Managing Director

R. French
KG

* * * * * * * * * * *

French Exhibit No. 16.

Filed May 1 1944 Charles E. Stewart, Clerk

CA 15798 4/25/41 LG

Docket Division U. S. Patent Office Oct 15 1941

March 16, 1939.

AIR MAIL ..

Mr. J. S. Human,
National Venetian Blind Company,
1770 Sichel Street,
Los Angeles, Calif.

Dear Mr. Human:

I feel sure that you and all your associates are going to be very pleased with the enclosed two samples.

In the first place you will notice that the spots which show through on the TU-TONE Tape have been eliminated from the street side. In the second place you will notice we have used a rayon filler, and our tests have satisfied us that it will stand up and not give you any gauge trouble. You will agree, too, that the street side of the tape is much fuller, and in general is a decided improvement over the first samples which you approved.

There is one bad feature; I have to charge you 75c a gross more to give you the rayon filler on the street side of the tape, but I am convinced that you will feel that the improvements we have made justifies the slight increase

in price, and upon receipt of this letter you will instruct us to proceed with your order as per enclosed samples.

I really believe that we now have something which is absolutely satisfactory and should help your business considerably. I predict that we are going to have some difficulty in supplying your demands.

Please be assured that even though we are quite satisfied with the enclosed samples our experiments will continue.

With kind regards, we remain

Yours faithfully,

THOMAS FRENCH & SONS LTD.

John D. Harris.

JDH:TED

P. S. We confirm our air-mail letter of March 9th, enclosing dummy color card, which we trust you have received.

* * * * * * * * * * *

French Exhibit No. 20.

Filed May 1 1944 Charles E. Stewart, Clerk
Docket Division U. S. Patent Office Oct 15 1941

CA 15798 4/25/41 LG

ITINERARY OF MR. JOHN D. HARRIS

Arrive	Leave
	New York 3/6 at 8 P. M.
Cleveland 3/7 at 7:36 A.M.	
Norwalk " 10:30 A.M.	
Toledo 3/7 (Com. Perry Hotel)	
Sturgis 3/8 (Kirsch)	
Chicago 3/9 (Medinah Club)	
" 3/10	"
" 3/11	"
" 3/12	"
"	

Further Information to be received from Mr. Harris later.

* * * * * * * * * * *

French Exhibit No. 26.

Filed May 6 1944 Charles E. Stewart, Clerk

U. S. Patent Office Board of Appeals Mailed Mar 3 - 1942

Colby vs French C. A. 15,798

Paper No. 114

Appeal No. 41,603 MEM
Hearing:
February 20, 1942

In the United States Patent Office

Before the Board of Appeals

Colby v. French

Patent Interference No. 77,405 between an application of George E. Colby, Serial No. 266,951, filed April 10, 1939; and an application of George Frederick French, Serial No. 281,228, filed June 26, 1939. Ladder Web.

Messrs. Barlow and Barlow for Colby.
Mr. Walter Gunn and Mr. H. C. Bierman for French.

This is an appeal by the party Colby from the decision of the Examiner of Interferences awarding priority of invention of the subject matter in issue to the senior party George Frederick French.

The application of Colby was filed April 10, 1939, while the application of French was filed June 26, 1939. After the interference was declared the party French brought a motion to shift the burden of proof since he had filed in England on April 6, 1939, a provisional application. This motion was granted by the Primary Examiner, thus mak-

ing the party Colby the junior party. The matter of shifting the burden of proof is not appealable, but can be raised at final hearing. The party Colby now contends that the motion to shift was improperly granted. In reviewing the decision of the Primary Examiner it is found that he went into this matter quite carefully. While it is true that the certified copy of this provisional specification does not contain a drawing, still it is believed that sufficient descriptive matter is found in paragraphs 2 and 3 of page 4 to enable one skilled in this art to make the device in issue. As stated in the decision of In re Bastian and Salisbury, 1916 C. D. 160, the British patent always takes the date of the provisional specification unless the complete specification is a departure from the provisional specification. We are of the opinion that there is no error in the decision of the Primary Examiner on this point.

The subject matter in issue is so-called ladder webbing of the type used in the making of Venetian blinds. This webbing in general consists of two main broad strands having interposed between them cross strands of such length as to house the usual flat strip used in these blinds. In the older forms both main strands were made of the same color. There are two sets of cross strands, one on each side of the medium line of the main strand. The cross strands are woven at the same time as the main strands and the ends of the warp threads of the cross strands are interwoven with the main strands. After the webbing has been woven it is necessary to cut out every other section of the warp threads, but that feature is not here involved. As a later development it was found desirable to have the two main strands of different color, using linen of a grey or neutral tint for the outside and a fancy color on the inside. This change involved difficulties for if a neutral color was used for the warp of the cross strands such warp would produce specks or dots in the surface of the main colored strand and if colored threads were used for such warp the color would also appear in the main strand of neutral color. Up to this point the structure described was

old. It was the object of both parties in this interference to produce a ladder webbing in which the cross strands were interwoven with the main strands without the production of spots or specks. This was accomplished by making each alternate thread of the warp used for the cross strands of a different color. By means of a special form of pattern chain it was found possible to interweave the colored threads of such warp into the main colored strand and at the opposite end of the threads of neutral color would be interwoven with the main strand of neutral color. The threads not interwoven were said to be floated on the inner surface of these main webs.

The party Colby, who was the manager of the International Braid Company of Providence, R. I., states that early in 1939 he had impressed on him by a salesman that it would be necessary to produce ladder webbing without specks in order to hold their customers. Colby testifies that he took up the matter of "mingled" ladders with the force in the weaving room on March 6, 1939, and explained to them how it should be made. The witness Marshall, who was then the designer at the plant, was given the job of making a chain draft and this was finished apparently on March 7 and appears in this record as Colby's Exhibits 1 and 3. After making the draft the chain was actually prepared by the witness Armfield, who completed the chain on March 8, 1939, and manufacture and sale was begun at once and has continued up to the time of taking testimony. The Examiner of Interferences has awarded Colby March 7, 1939 as his date of conception, and reduction to practice on March 8, 1939, certainly by April 5, 1939, when tapes were shipped to Bostwick-Goodell Company.

The senior party resides in England, where he made his invention and communicated the same to the witness Harris who is the manager of the Thomas French and Sons, Ltd., of this country. French's Exhibit 14 is a letter dated Manchester, January 27, 1939, which was accompanied by a sample of webbing produced in England and appearing here as French's Exhibit 1. It is clear from an examina-

tion of this exhibit that it satisfies the terms of the counts. The witness Harris and his secretary, Miss Donovan, have testified that French's Exhibit 1 was received in New York City in the early part of February 1939. It was Harris' intention to take up this matter immediately with his plant manager at Fall River but was prevented from doing so by reason of an accident which laid him up for two or three weeks. Just before going to Fall River Miss Donovan prepared a memorandum of items which he was to take up with the plant manager Gibbons and among these items was the ladder webbing just received from England. Gibbons testifies as to the visit of Harris and has identified Exhibit I as the sample which was left with him to reproduce. Gibbons apparently had no difficulty in determining how the cross strands were interwoven with the main strands. The only point on which there was any doubt was as to the type of loom that should be used. Gibbons has testified that Exhibit 1 has at all times been in his possession, while Harris in his testimony alleged that he took the sample with him to show others. This discrepancy is of no moment for it appears from Gibbons' testimony on page 92 of the printed record that probably a piece was cut off for Harris' use. After due study Gibbons made a chain draft to produce the web on March 10 and states that he had French's Exhibit 1 in his possession at least five days earlier, that is, on March 5, 1939. Harris fixes his date as to the visit of Gibbons as February 28 or March 1, 1939, and the testimony of Miss Donovan is deemed to corroborate this statement.

The Examiner of Interferences has awarded French a date of conception not later than March 5, 1939. We are of the opinion that French is entitled to a date of conception of early in February 1939, when his Exhibit 1 was re-

ceived in this country. This earlier date is deemed to be established by the testimony of Harris and Miss Donovan. If the latter Exhibit 14 followed the usual course in the mails it should have been received in New York early in February 1939.

After each of the parties had equipped their looms with chains so as to weave these ladder webbings in two colors they at once began to manufacture the webbing continuing the same up to the time of taking testimony.

The Examiner of Interferences has awarded the party Colby a date of March 8, 1939 for reduction to practice, and using the same reasoning it is clear that the party French is entitled to a date of reduction of practice earlier than April 6, 1939, when he filed his British provisional specification. However, since he is clearly entitled to a constructive reduction to practice by the filing of said British application it is not necessary to pass upon the question of an earlier date.

French has contended that Colby derived the invention from Harris, who soon after receiving French's Exhibit 1 made a visit to the Bostwick-Goodell Company for the purpose of selling ladder webbing to said firm. It is alleged that a salesman by the name of Pollard, in the employ of the International Braid Company, contacted Goodell and was given the information imparted by Harris. There is no positive proof that Colby received any information through this line and we must agree with the Examiner of Interferences that this charge is not proven.

For reasons stated we are convinced that the party French was the first to conceive and was diligent in constructive reduction to practice by the filing of a British provisional specification, and the decision of the Examiner of Interferences awarding priority of invention of the sub-

ject matter in issue to the senior party George Frederick French is affirmed.

Board of Appeals

E. T. MORGAN
Examiner-in-Chief
F. J. PORTER
Examiner-in-Chief
C. H. SHAFFER
Examiner-in-Chief

March 3, 1942

Messrs. Barlow and Barlow,
2005 Industrial Trust Bldg.,
Providence, R. I.

Mr. H. C. Bierman,
535 Fifth Avenue,
New York, N. Y.

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8798

GEORGE FREDERICK FRENCH and
ROGER FRENCH,

Appellants,

vs.

GEORGE E. COLBY and INTERNATIONAL
BRAID COMPANY,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

HERBERT B. BARLOW,
2005 Industrial Trust Bldg.
Providence, Rhode Island.

EARLE D. CRAMMOND,
Earle Building,
Washington, D. C.
Attorneys for Appellees.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED OCT 19 1944

Joseph W. Stewart
CLERK

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

GEORGE FREDERICK FRENCH and ROGER FRENCH, Appellants, *vs.* GEORGE E. COLBY and INTERNATIONAL BRAID COMPANY, Appellees.	No. 8798.

BRIEF FOR APPELLEE.

Counter Statement of the Case.

General.

Appellee Colby, a citizen and resident of the United States, filed an application for a patent Ser. No. 266,951 on April 10, 1939. The application is owned by International Braid Company, a Massachusetts corporation, the other Appellee in interest. Appellant George French filed an application for patent June 26th, 1939, Ser. No. 281,228. This application is owned by George and Roger French, the Appellants, both subjects of the King of England and residents of England, who operate corporations in both England and the United States for the manufacture of the invention. The inventions of both applications relate to a ladder web for Venetian blinds so constructed that the outer bands are of two different colors, the cross straps are of alternate threads of each of said colors, and the strap threads of corresponding colors are bound into the respective outer

bands so that no specks of different colors show on the outside of the outer band. An interference was declared by the Patent Office, the issue of which was the common subject matter of these two patent applications. The specific issue is whether Colby or French should be adjudged the prior inventor of the common subject matter.

The issue in this case originated in the Patent Office. The issue was first decided by the Examiner of Interferences, which decision was appealed and decided by the Board of Appeals. Proceedings denovo under Revised Statute 4915 were started in the court below by reason of the election of Appellants. Both parties have presented evidence as to facts surrounding the dates of invention in their respective applications.

No attack has been made by Appellants on the evidence presented by Appellees of the facts upon which Appellants rely. Appellants did set forth as point No. 9 under their "Points Relied Upon" that the court below erred in holding that Colby conceived the invention on March 6, 1939. This point was not developed in the brief of Appellants. The brief merely stated that the Appellants disputed this award (Appellants' Brief 14, Par. 8). Accordingly, it is understood that under Rule 17 (i) of the rules of this court that this assignment of error will be disregarded. Appellees accordingly rely upon the findings of fact concerning Appellees' case which were made by the court below (Appellants' App. 8 No. 15 to 20) and which are as follows:

Facts of Appellees' Invention.

Colby is a technically trained man, being a graduate mechanical engineer from the Massachusetts Institute of Technology and previously was an overseer of weaving. Colby had in his own mind the invention in issue January

15, 1939, or earlier. On March 6, 1939, Colby disclosed the invention to a Mr. Marshall, an employee under him who understood the invention. The first step in producing a new weave construction is to provide a chain draft for governing the loom harnesses. This was made by Marshall on March 7, 1939. On the following day, March 8, 1939, the invention was produced, tested, and reduced to practice. Manufacture was begun at once by Appellees and sample shipments were made to Appellees' Chicago office on March 15th and to Cooley, a customer, on March the 20th, 1939, and a quantity shipment was made to another customer, Bostwick-Goodell, on April 5, 1939, and manufacture has continued by the Appellees ever since.

Facts of Appellants' Invention.

Appellant George French conceived the invention in issue in England and disclosed it in England to Roger French. Roger French wrote a letter dated January 27, 1939, sending a specimen of webbing to John D. Harris, a United States resident and manager of the French's United States corporation with an office in New York and a factory located in Fall River, Massachusetts. Harris or his secretary opened the letter at New York. Neither Harris nor his secretary were sufficient of technicians to *understand* the invention in issue. Some little time elapsed before Harris showed the specimen received from Roger French to Edward J. Gibbons, the technical man connected with the Massachusetts factory of French. Gibbons at some time thereafter set about trying to produce the invention at the factory in Fall River, Massachusetts, and made a chain draft dated March 10, 1939. Some letters were shown dated March 14, 15, and 16, referring to the invention. Nothing was shown in the evidence as to what occurred after March

16, 1939 and up to the date of filing the French patent application in the United States on June 26, 1939. This patent application of June 26th referred to the filing of a British patent application April 6, 1939, but no evidence was offered in this case to prove the subject matter of the British application.

Controlling Points of This Case.

The questions for decision in this case all revolve about the evidence submitted on behalf of the Appellants and may be divided into the following broad topics of discussion:

(1) whether in an interference proceeding between two patent applications, foreign activities of one inventor are of avail to him in proof of priority of invention;

(2) whether information concerning an invention transmitted into the United States to a person incapable of understanding the invention is sufficient to substantiate a date of invention into this country;

(a) assuming understanding and appreciation of the invention by a person in the United States is necessary, the further question is whether Harris was a person capable of understanding the invention;

(b) assuming Harris incapable of understanding, the further question is *when* a person who was capable of understanding the invention really did understand the invention;

(3) A further possible point of discussion is the lack of diligence of French for approximately three months prior to June 26, 1939, the date of filing the French application.

If these questions are answered as contended by Appellees, the Appellants fail and the judgment of the lower court should be affirmed.

Statute Involved.

The statute which comes into interpretation in connection with this case is Revised Statute 4923, U. S. C. Title 35, sec. 72. The statute is brief and is quoted as follows:

> "(Sec. 4923. R. S. (U. S. C., title 35, sec. 72)). Whenever it appears that a patentee, at the time of making his application for the patent, believed himself to be the original and first inventor or discoverer of the thing patented, the same shall not be held to be void on account of the invention or discovery, or any part thereof, having been known or used in a foreign country, before his invention or discovery thereof, if it had not been patented or described in a printed publication."

Summary of Argument.

(1) No proof exists in this case of French having previously patented his invention or described it in a printed publication. Nothing that French has done in England pertaining to the invention in issue can be used by him in an interference proceeding between his application and another pending patent application. To award French dates of activities in England would be in violation of Statute 4923 as it would in effect block the granting of a patent to Colby, a United States resident and citizen.

(2) For the date of an invention in the United States the disclosure of the invention must be to some person in the United States capable of *understanding* the invention. The

rules concerning disclosure should not be relaxed in favor of a foreigner. Harris was not a person capable of understanding the invention by his own admission under cross examination. The only person capable of understanding the invention on the Appellants' side of the case was Edward Gibbons and he did not at once understand the invention. It was necessary for him to examine a specimen under a magnifying glass in order to understand it. The first written record of date Gibbons has showing any understanding of the invention is a chain draft which bears the date of March 10, 1939. The correspondence, however, which relates to the invention indicates that Gibbons did not understand the invention until March 16th. Both of these dates are later than completion of the invention by Colby which was March 8, 1939.

(3) No activities have been shown by Appellants between the dates of March 16th and June 26th, 1939. This is a critical period in which diligence or activity should be shown. French lacked diligence because of an entire absence of accounting for this period.

An affidavit attached to a patent application acknowledging a foreign application is insufficient to prove that the foreign application is the same as the U. S. application, and consequently no reliance may be placed upon such an allegation by party French. This is particularly effective in connection with the consideration of the question of diligence.

Argument.

The basis of this proceeding is that one but not both of the parties will be granted a patent.

1. Foreign Acts Incompetent.

Appellant, George French, is a resident of England. He makes no claim to having thought of or constructed the invention in the United States himself. He did lodge in the United States Patent Office an application for a patent on June 26, 1939. Thus, he is entitled to this date of conception as constructive reduction to practice. However, Appellants appreciate that this date cannot be relied upon for conception as it is too late and accordingly some earlier acts must be shown.

The question at once presents itself as to whether any acts by George French which occurred in England may if proven be used to his benefit and to the disadvantage of Colby or against the grant of a patent to Colby. It is the Appellees' contention that no acts which occurred in England may be used against Colby. The first point made is that the contest here is for the grant of a U. S. patent to Colby. Neither party has a patent but each has an application for a patent. Appellants urge in their brief at page 15 that the case of *Electric Storage Battery Company* v. *Genzo Shimadzu,* 307 U. S. 5, is a case in point. This *Shimadzu* case involved a U. S. *patent* and the defense was on an unpatented prior use. The question was whether or not the patentee could carry his date of invention back of the unpatented prior use by acts outside of the country to support his patent, and while the court decided that the foreign acts might be considered to support a patent it distinguished this case from the usual interference case

where there were two patent *applications* pending, which is the present appeal.

At page 13, the court in discussing R. S. 4923 says:

> "The effect of this section is that in an interference between two applicants for United States patent, . . . the application and patent for the domestic invention shall have priority despite earlier foreign knowledge and use not evidenced by a prior patent or a description in a printed publication."

Lower on page 13:

> "Thus, if a diligent domestic inventor applies, in good faith believing himself to be the first inventor 4923 assures him a patent and gives it priority, despite prior foreign use, even though that use is evidenced by a patent applied for after the invention made in this country."

With this *Shimadzu* case should be grouped the cases *Hanifen* v. *Godshalk,* 78 F. 811, *Hanifen* v. *Price,* 96 F. 435, *Welsbach Light Co.* v. *American Incandescent Lamp Co.,* 98 F. 613, *Badische Anilin & Soda Fabrik* v. *Klipstein & Co.,* 125 F. 543, *Claude Neon Lights, Inc.* v. *Rainbow Light, Inc.,* 47 F. 2d 345. All of these cases involve a domestic *patent* and the question of saving that U. S. patent by carrying back the date of invention. In our situation, evidence of foreign acts would be against the grant of a patent to Colby. Because of Statute 4923 R. S., an *application* for a U. S. patent is placed on an entirely different footing from a granted *patent.* In an article discussing this *Shimadzu* case in Vol. 31 of The Journal of the Patent Office Society, it is stated at the top of page 516

> "It is at least clear that the practice in *inter parties cases before the Patent Office* is not effected

> by the holding of the Supreme Court in the Shimadzu case." (Emphasis ours.)

The interference practice under R. S. 4915 in the Federal Court is fundamentally the same as it is before the United States Patent Office, both being governed by the same Statutes (R. S. 4904, U. S. C. Title 35, Sec. 52). The interpretation of these statutes by Court decisions or decisions of the Commissioner of Patents are therefore both pertinent. Revised Statute 4923, U. S. C. Title 35, Sec. 72, is very plain that any part of the invention which was known or used in a foreign country before the discovery in the United States if *not patented* or described in a printed publication will be no bar to a U. S. patent, and the courts have construed this to mean that foreign acts will not bar the grant of a patent to a domestic inventor who has invented in the United States. Foreign acts have never been considered of any value if their effect was the *blocking* of a patent to be granted in this country or the invalidation of a U. S. patent. In the *Shimadzu* case the situation was reversed. The foreign acts were in support of a U. S. *granted* patent and this Statute R. S. 4923 did not apply. In the present case, Colby seeks a patent. If foreign acts are used in any way to block the granting of that patent the use of such evidence would be in violation of R. S. 4923 and will be an innovation in the patent law and out of harmony with all reported cases.

Doyle v. *Spaulding et al.*, 19 F. 744 (C. C. D. N. J., Mar. 15, 1884), page 746:

> "After a careful consideration of the provisions of the three sections of the patent act which bear upon the subject, (sections 4886, 4920, and 4923, Rev. St.,) we are of the opinion that the use, or a knowledge of the use, of an invention in a foreign country by persons residing in this country will not defeat a

patent which has here been granted to a bona fide patentee who at the time was ignorant of the existence of the invention or its use abroad."

Guaranty Trust Co. of N. Y. v. *Union Solvents Corp.*, 3 F. Supp. 572 (D. C. Del., May 23, 1933) page 574:

"Prior use in a foreign country could not affect the validity or scope of a United States patent. Hurlbut *v.* Schellinger, 130 U. S. 456, 471."

City of Milwaukee v. *Activated Sludge*, 69 F. (2d) 577 (C. C. A. 7th, Mar. 2, 1934) 588:

[13] It is contended by appellant that knowledge of the activated sludge process at Manchester was complete in the United States more than a year prior to the filing of any of the applications for the American patents which have anything to do with the activated sludge process, and months before British applications alleged to correspond therewith were filed in Great Britain. Notwithstanding the fact that the bio-chemical process described in the Ardern and Lockett paper was sent to the United States, and that information concerning the tank at Manchester, designed by Jones, and observed by one of appellant's witnesses, and other information obtained by another witness of appellant from Dr. Fowler were all communicated to others in the United States prior to the applications for the American patents, the contention can not be sustained. Reduction to practice in a foreign country or a previous foreign invention can not operate to invalidate a patent granted in the United States unless the foreign invention has either been patented or described in a printed publication, neither of which conditions existed here. 35 USCA §§31, 72; Westinghouse Machine Company *v.* General Electric Company (C. C. A.) 207 F. 75."

Cugley v. *Bundy Incubator Co.*, 93 F. (2d) 932 (C. C. A. 6th Dec. 13, 1937) page 934:

> "[2] The claimed use of the McCoy incubator in accordance with the Stover process adds no weight to appellants' contentions, for the record indicates that it was used only in Canada. Cf. Hurlbut *v.* Schillinger, 130 U. S. 456, 471, 9 S. Ct. 584, 32 L. Ed. 1011; Permutit Co. *v.* Wadham, 6 Cir., 13 F. (2d) 454, 456."

2. Disclosure as Date of Conception of Invention.

Assuming foreign acts to be legally incompetent as evidence in this proceeding, we proceed to see what other evidence of acts taking place in this county has been produced by Appellants.

The rules concerning conception of an invention should not be relaxed in favor of a foreigner regardless of what he has done in a foreign country. The act of conception while theoretically it occurs in the mind of the inventor cannot be accepted under the interpretations of the patent law until that operation of the mind has been made manifest by the disclosure to somebody else in this country capable of *understanding* the invention. The body of patent law, of course, is based upon the theory of encouraging disclosure to the public so that an invention will get into public hands to increase the knowledge of mankind and be generally beneficial to the populace of the United States. Looking forward toward that end running throughout the decisions we find court after court holding that a disclosure of an invention, which is the means by which conception is proved, must be to a person capable of *understanding* the invention so that that invention may be reproduced or eventually come into the fund of general knowledge. A drawing no

matter how complete is not a disclosure unless witnessed by some person who is capable of *understanding* the invention and does *understand* the invention.

On behalf of Appellants it is contended that a piece of the tape which is the subject of the invention was shipped into the United States sometime in February 1939. If that piece of tape remained in the envelope unopened or was opened by some person not understanding the invention and lay dormant, it does not serve to meet that requirement looking toward advancement of human knowledge that the invention must be understood by some person capable of understanding which is so clearly a part of the law of interference practice.

Underwood's Interference Practice of 1928 states at page 187, under the heading Paragraph 73 "Conception of Foreign Invention is date of knowledge or application in the United States", the following:

> "At whatever date an unpatented and unpublished foreign invention may have been in fact conceived by its inventor, its conception in the United States takes place only when it becomes an object of intellectual appreciation within the limits of this country."

The words "intellectual appreciation" are important because they refer to an *understanding* of the invention. On the question of understanding the following is of interest. From Interference Practice by Rivise, Ed. 1932 ¶53, pages 43 and 44:

> "The disclosure must not only be made to at least one person capable of understanding the invention, but the person must actually understand the disclosure."

In *Eastman* v. *Houston,* 18 App. D. C. 135, it was held that disclosure in the sense of the patent law must be made ordinarily to persons competent to *understand* and appreciate the alleged invention. Merely showing a device and a drawing to witnesses who do not *understand* the invention cannot be considered a disclosure. (In this case the inventor disclosed the invention to a farm hand which was held not a sufficient disclosure as the farm hand did not *understand* it.) In *Henggi* v. *Delmeyer,* 48 App. D. C. 141, Smyth, Chief Justice, stated "a disclosure to be sufficient must so describe the purported invention as to make its nature clear to persons competent to understand it." (In this case the invention was disclosed to the son and wife of the inventor. They did not understand it and it was held that there was not a sufficient disclosure.)

In *Winter, et al.* v. *Latour,* 35 App. D. C. 415, it appeared that Winter conceived the invention in Austria and sent the disclosure thereof to Berg in Germany. Berg sent a description to Rice in Schenectady. Rice read and *understood* the invention on January 24, 1903. This date was, therefore, taken as Winter's date of conception. It will be noted in this case that the date of conception was not given to Winter as the date when the description *arrived* in this country but was rather given as the date when Rice *read* and *understood* the invention. The description might have been in this country for any length of time and of course must have arrived days before it was finally read and *understood* by Rice. The *understanding* is the part which is of importance and is the date which was awarded in this important case.

In the Patent Office case of *Harris* v. *Stern & Lotz,* 1903 C. D., 207, 105 O. G. 259, decided by Allen Commissioner, Stern & Lotz were foreigners and disclosed their invention

to their attorney on March 27, 1901. He proceeded to file an application for a patent the following month, April 30, 1901. The date of March 27, 1901 was given as the date of conception. It is, of course, clear that this date is a date when the attorney *understood* the invention.

In this case Harris and his secretary both witnesses of Appellants' claim to have received Exhibit 1. They were shown not to have understood the invention, and accordingly neither should be considered as a person capable of having the invention disclosed to him. A date of showing the invention to the witness who did *not understand* is of no avail. The premium is placed upon the ability of the person to understand and the fact that he did *understand* the invention at the time it was explained to him.

In *American Tri-Ergon Corporation* v. *Coe Commissioner,* 30 F. Supp. 83 (D. Col. Oct. 12, 1939) (Interference under R. S. 4915). In refusing to give the inventor the benefit of a disclosure to a person signing a drawing the Court said at page 85:

> "[2] I think that the Court should say that Mrs. Phillips, the stenographer referred to, impressed the Court favorably, but at the time of the alleged conception and drawing, she was employed in an adjoining office, was merely called in to witness Leich's signature, knew nothing about the subject matter of the drawing, and had no scientific education; so that any identification of the drawing obviously could not be made by her."

Occasionally we run up against the situation where the one to whom the invention is first shown does not understand the invention. Many of the decisions which would upon their face look as though the introduction of something or other into this country is the date taken do not

make apparent the ability of the persons who first received the invention to understand the invention. It would seem quite apparent that decisions which did not mention the fact of understanding did not *turn* upon this point. Likely in such cases it was perfectly evident that the persons to whom the invention was shown did *understand* it and the point was not discussed and consequently not mentioned in the opinion.

In the present case we have a situation where George French or somebody on his behalf sent the invention into this country and the person who first received it or opened the letter in which it was supposed to be enclosed did *not understand* the invention. The persons first opening or seeing the letter (No. 600 French Exhibit 14), were a Mr. J. D. Harris, a New York salesman, who knew little or nothing about weaving or his secretary who knew no more. Harris says (Appellant's App. 59, middle of page):

> "Q. Are you sufficient of a technician to know what was done in Exhibit 1 to change it from the one with the specks showing through, to one with the specks not showing through? A. No sir.
>
> Q. So it would be impossible for you to give Mr. Gibbons any instruction along that line would it? A. Oh, yes impossible. It would be impossible.
>
> Q. And all the instructions that you had was contained in that letter which Roger French sent you under date of January 27, 1939 was it? A. There was no instructions, it was just a sample attached to the letter.
>
> Q. But you had no other instruction beyond that? A. No, sir.
>
> Q. So everything that you learned about the construction was through Mr. Gibbons was it? A. Yes, surely.

Q. Do you recall any other technical people besides Mr. Gibbons to whom you showed Exhibit 1?
A. Technical people, no, sir."

It will thus be apparent from the above testimony of Harris that he knew nothing about the invention when he saw the sample. Mr. Harris by his own testimony knows nothing about the invention after having received a specimen. He was *incapable of understanding* the invention and the invention so far as advancement toward the public domain or fund of general knowledge might just as well have been sealed in the envelope in which it came as to have been inspected by Mr. Harris. The same is true as to his secretary. She was no technical person. She did *not understand* the invention and was incapable of so understanding it. There is no attempt made in the testimony produced by the appellant to indicate that Harris knew anything about the invention, or that his secretary knew anything about the invention, and Harris testified orally in this proceeding in the Court below about one or two additional matters which the appellant considered of sufficient importance to call him as a witness.

The only technical man which was produced on behalf of the appellant was Edwin J. Gibbons and the question arises not as to when Gibbons received the sample but when Gibbons examined the sample sufficiently to *understand* it. The testimony presented by the appellant is lacking in any definiteness as to *when* such an examination occurred.

If we examine the testimony and evidence produced by Appellant as to Gibbons' activities in connection with the production of the invention, the earliest date in any written record is that of March 10, 1939, a date which appears on the chain draft, French Exhibit 2. We feel that when this

chain draft was made that the invention was then *understood* by the man who made the chain draft, but we cannot account for certain letters which were exchanged between Gibbons and Harris all dated later than the date which appears on this chain draft. This exchange of letters would indicate that Gibbons was not in full possession of a knowledge of the invention until the 15th or 16th of March, 1939, a date when a second chain draft was produced. The pertinent parts of the letters which were exchanged indicating this situation appear as follows:

French Exhibit 4 was a letter dated March 14, 1939 which Gibbons wrote to Harris. The start of the second paragraph says:

> "I have spent eight to nine hours at home the last two or three evenings studying the Tutone sample from England in which the backstitching is hidden. . . . The nearest approach of this interlacing I have been able to make is shown on the enclosed Tutone decorative tape. . . . While I agree with you that it would not be politic to inquire from Manchester just how the hidden Tutone stitching was perfected, it might be advisable to inquire cautiously concerning this point.
>
> "You will find enclosed a small piece of fancy tape with rayon filling in the back. You will please note how little this improves the appearances. However, it does seem fuller."

The *fancy* tape referred to in French Exhibit 4 was not produced in evidence but apparently this is Dekra tape intended for National, of a construction which did not include the invention in issue as shown below.

French Exhibit 5 is a letter dated March 14, 1939 which Harris wrote to Gibbons. The last paragraph says:

"Regarding the TuTone Tape with the specks, or what I usually refer to as 'small pox' showing through, the only information I had from Mr. French was that two of their tacklers had overcome this difficulty as per sample and 'Mr. Gibbons will easily be able to solve the technical side of it'. It is their claim that only the proper color is bound in to each body and although the strength of the binding in is not as before it is quite adequate. I am sorry I cannot give you any more information, but I am sure you will be able to solve this problem."

French Exhibit 6, a letter dated March 15, 1939 from Harris to Gibbons states, in the middle paragraph on the page, the following:

"I am now waiting patiently to receive the sample of design which National has accepted with a mottled strap (so that the binding in does not show) and with a rayon filler. I will send it out to them by Air Mail for their approval. I am sure that National will like it as it undoubtedly improves the street side of the tape.

"TU-TONE TAPE

I am sorry to cause you such headaches with the TuTone sample which came from England. I will in a roundabout way ask Mr. Roger French to tell me how it is done. I will give him the reason that I want to compare your method with theirs, of course, inferring that you found a way to do it very quickly."

French Exhibit 7 is a letter dated March 15, 1939 from Gibbons to Harris, the second paragraph of which says:

"Enclosed you will find a sample of ladder tape with the hidden stitches and rayon backweft; pattern required by National.

"I am inclined to say that I still think I have been put 'behind the eight ball' regarding this mottled

cross strap sample sent from Manchester, but, at this time, will refrain from saying so. I must recall that in the enclosed sample incorporating the mottled cross straps we have less ends per inch and less picks per inch than in our regular F. S. L. When this same weave is incorporated in our regular Tutone tape, we may find a different result.".

French Exhibit 8, a letter dated March 16, 1939 from Harris to Gibbons says:

> "The samples of Dekratape with the hidden stitches are excellent. I appreciate this immensely. They are going via air mail to National right away.
>
> Regarding the mottled cross straps, I wrote to Manchester as I told you, in a non-commital manner, and just as soon as I have a reply I will let you know."

The only explanation which occurs to Appellees is that Gibbons might have started the chain draft on March 10th, the day he placed the date there, but did not finish it until the 15th or 16th when he copied it over into a new layout.

Even if we accept the date of March 10, 1939 as the date upon which the chain draft was made (and it only takes a few hours to make the chain draft), then the question still arises as to when Gibbons looked at the sample sufficiently close to understand it. Testimony (Appellant's app. 25 and going over to 26), reads as follows:

> "Q. How was Exhibit 1 delivered to you? A. Mr. Harris brought that to me personally.
>
> Q. What did he say about it when he brought it to you? A. He told me that was a sample of tu-Tone tape with the hidden stitching that was made by Thomas French & Sons in Manchester.
>
> Q. Did he describe to you how it was made? A. No, Mr. Harris did not pose as a designer or an expert on weaving.

Q. All he did was to hand it to you? A. That's right.

Q. And say that he had received it from somewhere else? A. That's right.

Q. And was it your job to find out how it was made? A. Yes.

Q. In order to do that, what did you do, to find out how it was made? A. All I had to do was put a pick glass on there, because it is quite simple. In fact, he might almost have described it over the telephone to me; that is about all that would have been needed."

It will thus be apparent that in order to *understand* the invention Gibbons had to put a "pick glass" (magnifying glass) on the specimen to see how it was made, but there is not one iota of evidence in the case as to *when* he examined this sample with a "pick glass." The sample may have been delivered and laid on his desk several days before this occurred. This would be very likely as Harris indicated he had several things to discuss with Gibbons. In a review of the evidence which is built around the March 10, 1939 chain draft to find if there was anything that occurred to prompt the making or commencing of this draft on March 10, 1939, the only occurrence in evidence is a letter which Harris said he wrote from the Commodore Perry Hotel in Toledo and which Gibbons says, (Appellants app. 24) that he received on the 8th or 9th of March. It might well be that such letter spurred Gibbons into activity to then examine the sample which was in his possession to see how it was made and then to start to make up the chain draft which was dated on the 10th of March the following day. The best we can deduce in favor of the party French is that there was possibly an examination of the specimens the 9th or 10th of March and the day of such examination

Gibbons started to make up the chain draft or did make up the chain draft, the latter of which is somewhat problematical in view of the exchange of letters, above reviewed, which followed. This date of March 10th, however, is too late to be of any advantage to the party French, as Colby on March 8, 1939 had completed his invention by reduction to practice.

Although the court below held that Colby had a conception of this invention in his own mind on January 14, or 15, 1939 or before, and this date is earlier than any acts of Appellants in this country, the Appellees do not contend that Colby should be awarded this date as the date of his invention because he had not at that time disclosed the invention to a person who *understood* the invention. It was not until March 6, 1939, that Colby disclosed the invention to Mr. Marshall, a designer who understood the invention, and this is the date accordingly which Colby contends should be awarded him. This date was awarded Colby by all of the tribunals of the Patent Office and by the court below. This award was consistent with Appellees' theory of this case.

3. French's Alleged British Application.

In Appellants' brief, under the heading "Points Relied On", paragraph 8 on page 5, states as follows:

> "8. The District Court erred in not holding that French's British application corresponding to the United States application, and filed in Great Britain on April 6, 1939, was a constructive reduction to practice of the invention in this country."

This is the first time in this proceeding that Appellants have made reference to a British application. No British

application has been introduced in evidence in this proceeding.

Revised Statute, Section 4887, Title 35, sec. 32, provides for certain privileges in connection with the claiming of an earlier filed foreign application. Questions under this statute arise from time to time and the question of procedure and proof of such foreign application has arisen. Practice before the Patent Office requires a showing that the United States applicant and the foreign applicant are the same and requires the filing of a certified copy of the foreign application in order that a comparison may be made between the foreign application and the United States application for the purpose of determining *identity* of subject matter between the two. The practice in the Patent Office has gone so far as to make a statement in the Oath of the United States application *prima facie* proof as to the applicant being the same as in the foreign application, but never has a reported decision gone so far as to say that a statement in an Oath of the United States application will establish *identity* of subject matter between the foreign filed application and the United States application as is here contended by Appellants.

On both of these questions see the case of *Steele & Steele* v. *Meyers,* 1914 C. D. 74, 205 O. G. 1021, decided July 22, 1914, by Commissioner Ewing.

This question of *identity* of foreign filed application has also come before this court in *Guettler* v. *Alfsen,* 53 App. D. C. 215, 289 F. 613, 123 C. D. 287, 314 O. G. 7, a case decided by Judge Van Ausdale, May 7, 1923. In this case the entire question turned upon the proof of one of the parties filing a Norwegian application. This party had introduced in evidence a copy of an alleged application which consisted in a specification and drawing to which a certificate was

attached generally to the effect that the specification and drawing were in due conformity with the original specification filed in Norway. This was held insufficient proof because "due conformity" was not an exact copy.

In the present case Appellants have not even offered a specification or drawing, much less a certificate, and there is no opportunity to compare the identity of the British application with the U. S. application. From what investigation Appellees have made, an attack on this identity would most certainly have been made if a copy of the application were filed, but the point is not before the Court. No reliance can be placed upon a British application without the production of a certified copy of the document.

4. French's Lack of Diligence.

If this Court for any reason awards a date to Appellant's earlier than March 6th as the date for the conception of French in this country, then in order for French to win it must be necessary to connect such date prior to March 6th with a reduction to practice by French, that is a completion of the invention by activity in this country and a *test* of that invention is necessary for the completion to be established as there was always a question of the strength and as Harris states (Appellants' App. 63, lines 6 and 7 from bottom of page). "A big objection that always came up would be the weakening of the strap". See *Hadley* v. *Ellis,* 49 App. D. C. 84, 258 F. 984, *Crabbs* v. *Wardell,* 57 App. D. C. 241, 19 F. (2d) 715, *Hurd* v. *Smith,* 25 C. C. P. A. 1137, 97 F. (2d) 147, to the effect that a *test* is necessary.

None of the tribunals in the Patent Office nor the Court below awarded Appellants any date of actual reduction to practice. They show no test of a construction made in the

United States. They did award him, however, a constructive reduction to practice by reason of his patent application. There is no evidence before this court entitling French to any earlier patent application date than June 26, 1939. French has omitted any proof of a foreign application. Accordingly, in order for French to win, if a date of conception is given him prior to March 6th, such date prior to March 6th, must be connected with the date of his application of June 26, 1939 by showing of activity or diligence, as this is usually termed.

A case in point is that of *Wilson, et al.* v, *Sherts, et al.*, 23 C. C. P. A. 914; 81 F. (2d) 755; 28 U. S. Pat. Q. 379, 1936 C. D. 264; 467 O. G. 724. The critical period was only four and a half months, and Wilson *et al.* contended that since the period was short, it should not be held unreasonable. In sweeping this contention aside, the court stated:

> "... As we understand this contention of appellants, it is that, if the critical period be very short, no affirmative acts of diligence need be established, but such is not the law. The rule is so well settled as to require no citation of authority that one who is the first to conceive but the last to reduce to practice is chargeable with diligence from immediately prior to the time the later inventor entered the field, and such diligence must be established by evidence."

In *Ireland* v. *Smith*, 25 C. C. P. A. 1258; 1938 C. D. 672; 497 O. G. 15; 97 F. (2nd) 95; 37 U. S. Pat. Q. 807, the critical period was only twenty-five days, but the party chargeable with diligence lost the interference, because the evidence adduced on his behalf did not show what, if anything, he was doing during this short period. In *Hull* v. *Davenport*, 24 C. C. P. A. 1194; 1937 C. D. 588; 485 O. G. 13; 90 F. (2nd) 103; 33 U. S. Pat. Q. 506, and *Brown* v. *Barton*, 26 C. C. P. A.

889; 1939 C. D. 279; 505 O. G. 5; 102 F. (2nd) 193; 41 U. S. Pat. Q. 99, unexplained delays of about six weeks were held fatal.

In *Grundy* v. *Van Leir,* 22 C. C. P. A. 1034; 1935 C. D. 398; 457 O. G. 701; 75 F. (2nd) 503; 25 U. S. Pat. Q. 1, the party chargeable with diligence lost the interference, because he was unable to account for eight days of the critical period, which was less than two months.

Activities abroad were held to be of no avail on the question diligence in *Wilson et al. v. Sherts et al.,* above cited, *Minorsky* v. *Thilo,* 20 C. C. P. A. 906, 63 F. (2nd) 452, *Rebuffat* v. *Crawford,* 21 C. C. P. A. 901, 68 F. (2nd) 980.

In *Peters* v. *Hisey,* 1893 C. D. 4; 62 O. G. 315, Hisey petitioned the Commissioner for leave to take testimony in Europe to corroborate his claim that he had made the invention in this country before going abroad. In dismissing the petition, the Commissioner stated:

> "The Constitution of the United States, when it authorizes the granting of patents, 'in order to promote progress of science and the useful arts', evidently means the promotion of the progress of science and the useful arts in the United States of America. The statute which makes public use abroad of no account here proceeds upon that theory. What Hisey did abroad, either by way of disclosure or reduction to practice, was not for the purpose of promoting the progress of science and the useful arts in America, and it therefore is not pertinent to the question whether he exercised reasonable diligence, for the end to which his diligence was directed was not the end which the Constitution or the statute has in view."

The only activity which French has shown is from a date March 10th to about March 16th. This does not carry

him forward to June the 26th and by reason of his inactivity or lack of diligence which he has failed to show, he must lose in this particular case on his evidence. French has not shown a single sale. He has not introduced a single invoice. There is no evidence of a test ever having been made. He tries to explain this inactivity on the ground that he did not wish his customers to know what he was doing. It is inescapable, however, that such concealment, if it occurred, is merely emphasis that he has failed to produce any evidence that he was doing such an act at all. The period of three months' inactivity can only be considered lack of diligence.

Oct. 20, 1944.

Respectfully submitted,

HERBERT B. BARLOW,
2005 Industrial Trust Bldg.,
Providence, Rhode Island.
EARLE D. CRAMMOND,
Earle Building,
Washington, D. C.
Attorneys for Appellees.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS AND ADDITIONAL APPENDIX.

FILED DEC - 5 1944

Joseph W. Stewart
CLERK

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8798

GEORGE FREDERICK FRENCH and ROGER FRENCH, *Appellants,*

v.

GEORGE E. COLBY and INTERNATIONAL BRAID COMPANY, *Appellees.*

Appeal from the District Court of the United States for the District of Columbia.

R. PEALE HERRICK,
Colorado Building,
Washington, D. C.,

HARRY C. BIERMAN,
141 Broadway,
New York City,
Attorneys for Appellants.

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REPLY BRIEF FOR APPELLANTS.

The brief for Appellees sets forth several arguments relative to Appellees' proof and Appellants' proof. The present reply to said brief will discuss each of the matters raised in Appellees' brief in the same order as set forth therein.

Colby's Proof.

Appellees' brief sets forth Colby's case in a most unusual manner, there being devoted thereto only a single paragraph of seventeen lines, appearing on pages 2 and 3 of said brief. It merely sets forth alleged facts as to dates when Colby claims to have made the invention. All of these dates are based solely upon an alleged disclosure by Colby on March 6, 1939 to Marshall, employed by Appellees.

The only basis for this brief summary are findings of fact 15 to 20 of the District Court. It is significant that although the District Court made such findings, they were not supported by any opinion of the Court. Therefore, we do not know on what basis the District Court made such findings.

Also, such findings of fact are not supported by any evidence in the record. Appellees have not printed any appendix to their brief and there are no facts of record to support such findings. All of Colby's argument is based upon the alleged disclosure by him to Marshall on March 6, 1939, and Appellants have disputed any conception or disclosure by Colby. There is not even in the record any proof that Colby filed an application for patent on the subject matter in issue; the allegation to this effect in the Complaint (Appellants' App. pp. 2-3) being denied in the Answer (Appellants' App. p. 6).

We believe that there was no disclosure to Marshall by Colby and therefore there was no conception of the invention by Colby. It is strange that Appellees did not print any of their testimony and this unusual procedure is most likely due to a fear by Appellees that such testimony would disprove any conception by Colby or disclosure to Marshall.

District Court's Findings re Conception and Disclosure.

In Finding of Fact No. 17 (Appellants' App. p. 8) the District Court held that the Appellee Colby had conceived the invention on March 6, 1939. The District Court in Find-

ing of Fact No. 8 stated that Appellants had disclosed the invention to Gibbons "early in March, 1939". The District Court further held in Finding of Fact No. 27 (Appellants' App. p. 9) that Gibbons "could understand the invention."

It is impossible to determine from these findings as to whether the District Court intended to hold that Colby had a conception later than or earlier than the disclosure of Appellants' invention to Gibbons. In holding that a disclosure was made to Gibbons early in March 1939, the District Court did not say how early in March such a disclosure took place.

From the record before the District Court, he might have meant to hold, as did the Board of Appeals and the Examiner of Interferences in the Patent Office, that such disclosure took place not later than March 5 and most likely on or about March 1, 1939. The Board of Appeals had stated as follows:

> "After due study Gibbons made a chain draft to produce the web on March 10 and states that he had French's Exhibit 1 in his possession at least five days earlier, that is, on March 5, 1939. Harris fixes his date as to the visit of Gibbons as Feb. 28 or March 1, 1939, and the testimony of Miss Donovan is deemed to corroborate this statement." (Appellants' App. p. 100)

The Board of Appeals also held as follows:

> "The Examiner of Interferences has awarded French a date of conception not later than March 5, 1939. We are of the opinion that French is entitled to a date of conception of early in February 1939, when his Exhibit 1 was received in this country. This earlier date is deemed to be established by the testimony of Harris and Miss Donovan. If the letter Exhibit 14 followed the usual course in the mails it should have been received in New York early in February 1939."

From these two quotations, it would appear that the District Court must have intended to similarly hold that French's conception in this country was not later than

March 5, 1939. Even if a date of conception of March 6, 1939 is given to Colby, French is considerably prior to Colby and the District Court should have based his decision upon such facts.

Alleged Conception by Colby and Disclosure to Marshall.

In order to refute any possibility that Colby has proven a date of conception or a date of disclosure to Marshall of the invention in issue, Appellants have printed the testimony of Marshall, and the same constitutes an additional appendix to this reply brief.

Appellants' proof clearly establishes by oral evidence and ample documents and exhibits to support every fact, that Harris and Miss Donovan received a sample of the invention in issue early in February 1939. Harris disclosed the invention to Gibbons not later than March 5, 1939 and left a sample with him, returning from the mill to New York not later than March 6, 1939, when he went to Ohio. On March 7, 1939, he disclosed a sample of the invention to Goodell of Bostwick-Goodell Company. Then there was, of course, activity by Gibbons in further reducing the invention to practice by making more samples, not later than March 10 and March 16, 1939.

These facts Appellees must overcome by showing a conception prior to any of the dates of said events. In Appellees' attempt to do this, they allege a disclosure date to Marshall of March 6, 1939. This was clearly denied by Marshall in his testimony both on direct examination and on cross-examination.

Preliminarily, Marshall, who was called by Appellees to testify, had shown that he was a designer of fabrics and was fully qualified to make a fabric of the type in issue here. He was asked by his attorney as to the circumstances under which he made the design now in issue. He stated as follows:

> "Q. 23. Mr. Marshall, will you state how you came to make up the chain draft of Duplex ladder web? A.

> Since they put those new looms in there, when they first put them in, I was the only one that really worked on the chain drafts. Previous to that I had made previous samples. That is where I got the idea from." (Additional App. p. 4)

In essence, his testimony was to the effect that he had had experience in attempting to solve the same difficulty and this led him to the solution of the present issue. He did not state that the idea came to him from anyone else and attorney for appellees attempted to make him state that the invention was disclosed to him by Colby. However, Marshall testified as follows:

> Q. 24. Did Mr. Colby tell you what to make up? A. He said he wanted a two-color job. That is all he said to me, and with the information I had previous to that, I took it home that night and made out a draft, made out these drafts, and the next day I got it working.
>
> Q. 25. Did he tell you that he wanted a two-color job so that the colors would not show through? A. As far as I know, he wanted a two-color job so that the color would not show." (Additional App. p. 5)

Marshall flatly denied that Colby disclosed the invention to him. He stated that all Colby said was that he wanted a two-color ladder web where color would not show through on the outer bands. This is not the invention in issue but is the problem which is to be solved. Harris had the same idea years before and had urged French to solve the problem. Harris called the specks of color showing through on the outer bands "small-pox" and he wanted French to eliminate the same. Obviously, this is not the invention but only a statement of the problem. Therefore, it is quite conclusive that the mere request made by Colby of Marshall could not be a conception of the invention.

On cross-examination, Marshall stated just as positively as he had on direct examination that Colby had nothing to do with the making of Duplex ladder web by International. He stated as follows:

"XQ. 92. I understand that you were working with this Duplex ladder web prior to March, 1939? A. Right.

XQ. 93. All that work was done on your own initiative without instructions from anybody? A. Without instructions from anybody, and as I showed you, this block here was the first idea I was working on." (Additional App. p. 12)

Marshall then stated that he had from time to time attempted to interest the responsible officials of International in taking some of his ideas for two-color ladder web where color does not show through on the outside, and manufacturing the same. He was unable to obtain any interest by them.

"XQ. 98. And the description of it is in your own writing? A. That is right. I showed it to the powers to be but they did not seem to be interested to bother with it so I dropped it and let it lay awhile until they brought it up again.

XQ. 99. Who are "the powers to be"? A. That is Mr. Colby but he didn't seem to think the idea was worth anything, so I just stopped making those ideas, that was all. I think it explains on the back here." (Additional App. p. 13.)

In his cross-examination, Marshall more than once reiterated that Colby had nothing to do with the invention in issue nor with any of the activities by Marshall or others in the making of two-tone or Duplex ladder web. As to the making of chain draft, which was in fact a drawing of the invention, Marshall testified as follows:

XQ. 104. You stated that you yourself worked out the details of this chain draft? A. All of it.

XQ. 105. You received no instructions from Mr. Colby as to how you were to work that out? A. No; he left it all to me in charge. He said I knew more about it than he did and he left it in my charge so that it was up to me to go ahead and get something for him.

XQ. 106. He simply gave you the idea that he

wanted a Duplex tape in which the specks of color did not show through on the outer bands? A. Right." (Additional App. p. 13.)

He thereby reiterated what he had said on direct examination, namely, that all that Colby told him was to make a ladder web where the color does not show through on the outer bands. There were no instructions by Colby as to the stitching chart from which the loom could be changed to make the new ladder web. Relative to this, Marshall said as follows:

XQ. 110. Did Mr. Colby give you any instructions as to this stitching draft or chart? A. No.
XQ. 111. All of the details were devised by yourself alone? A. That is right." (Additional App. p. 14.)

As to the remainder of the activities in preparing to make the samples, and further activities in completing the invention, Colby had not the slightest to do with any of such activities. It was Marshall who had everything done under his instruction, direction and supervision. Marshall stated as follows:

"XQ. 116. Under whose supervision was the ladder web made? A. It was really up to me to see that it got out.
XQ. 117. I am speaking for the first samples that were made. A. I was the one that got the first samples out.
XQ. 118. Who did this work? A. I don't know what particular weaver it was that ran it at the time. It was put in the regular loom.
XQ. 119. But it was under your instructions that it was done? A. Yes." (Additional App. p. 14.)

As far as the record shows, Colby had nothing to do with any of the activities of International in either the conception of the idea of the Dulpex ladder web or in any of the details of manufacture thereof. The record does not even show that Colby was aware of any such activities in the mill of International.

As far as the present record is concerned, there is nothing to indicate that Colby even alleges that he conceived the invention, nor that he had any knowledge of the invention prior to the date of the application for patent filed by Colby, and which is not in the record here. Marshall's testimony definitely proves in a most positive manner that Colby made no invention, and therefore is not entitled to a patent which appellees seek by the present suit.

Activity of French in England.

Appellees' brief on pages 5 to 11 contends that French's activities in England cannot be of value to him in the present suit. The basis of this argument is Section 4923 of the Revised Statutes, which section is quoted. This section does not apply to the present situation because it relates to a controversy between a PATENTEE and another party who defends against the patent on the ground that he had made the invention earlier in a foreign country. The statute states that such a patentee shall not have his patent declared void on such a ground.

But in this case, Colby is not a patentee, he being merely an applicant for patent. Therefore, his whole argument must fall because the statute does not apply to the present situation.

Appellants do not contend that French's activities in England by themselves would be proof of invention which would be pertinent to an interference. Appellants' contention is that such activity of French in England, coupled with introduction of the invention into the United States, is proof that French conceived the invention and reduced the same to practice as of the date of receipt of the invention in this country, namely, the receipt early in February 1939 of the letter and the sample by Harris and Miss Donovan.

French's Date of Conception in the United States.

Appellees' brief on pages 11 to 21, argues that even though it may be considered that the sample of French's product in issue here arrived in this country in February 1939, it does not constitute a conception until one who is "capable of understanding the invention" has had a disclosure thereof. In this case, we contend that the invention was reduced to practice prior to being sent to this country, and this does not appear to have been disputed by Appellees.

The argument of Appellees is to the effect that neither Harris or Miss Donovan understood the invention and it was only Gibbons who was capable of understanding the same. Such is not the case here and Appellees' argument is without force.

If the invention were directed to a *method of weaving* fabrics in order to produce the result obtained by the present invention, then of course, neither Harris nor Miss Donovan were capable of understanding such an invention. Neither of them was a designer of woven fabrics and neither was capable of reproducing the product, but both understood it in that they could see that it embodied all of the features of the invention in issue.

This invention is of the simple type which does not require any test thereof for reduction to practice but mere production thereof is a reduction to practice. It was testified by Appellants that the fabric was successfully tested. The Board of Appeals in its decision was quite satisfied that this was a simple invention and that a mere inspection was sufficient for even a layman to understand it. The Board stated as follows:

> "French's Exhibit 14 is a letter dated Manchester, January 27, 1939, which was accompanied by a sample of webbing produced in England and appearing here as French's Exhibit 1. It is clear from an examination of this exhibit that it satisfies the terms of the counts." (Appellants App. pp. 99-100)

The Court may inspect French's Exhibit 1, and without any knowledge of the weaving art, may compare each of the limitations of the counts and readily find such limitations in the structure. Also, it will be quite evident from a mere inspection that the difficulty sought to be overcome by the invention has been solved, so that no specks show through on the outer webs. This will clearly indicate that the layman is fully capable of "understanding" the invention, contrary to the argument of Appellees that neither Harris nor Miss Donovan could understand it.

Application in Great Britain of French as Constructive Reduction to Practice.

Appellees' brief on pages 21 to 23 argues that because there was not introduced into evidence a certified copy of French's application in Great Britain, there is no proof as to a constructive reduction to practice on the date of filing of the British application, namely April 6, 1939.

In the District Court Appellees introduced Colby Exhibit 50, which is a photostatic copy of the application of French involved in the present controversy. Attached to the application as an integral part thereof is the inventor's oath which states that a corresponding application was filed in Great Britain on April 6, 1939, well within the Convention year. The District Court made no finding of fact regarding this application. In Appellants' main brief this matter was discussed and in the absence of anything to the contrary, the oath to the application of French is to be considered as proof of the filing of the corresponding application in Great Britain. The exhibit was that of Appellees and they are bound by the fact introduced by them into the record.

The Board of Appeals had considered the British application and had given French the benefit of the date thereof in the following words:

> "The Examiner of Interferences has awarded the party Colby a date of March 8, 1939 for reduction to

> practice, and using the same reasoning it is clear that the party French is entitled to a date of reduction of practice earlier than April 6, 1939, when he filed his British provisional specification. However, since he is clearly entitled to a constructive reduction to practice by the filing of said British application it is not necessary to pass upon the question of an earlier date." (Appellants App. p. 101)

If a date of reduction to practice by French of April 6, 1939 is material, there is ample proof by the admission of Appellees of such a date but in Appellants view, it is of no great significance since we have proven several reductions to practice in this country, as for example, those of Gibbons on March 10 and March 16, 1939.

Diligence by French.

Appellees' brief on pages 23 to 26 argues that Appellants must show diligence from some time prior to March 6, 1939 until a reduction to practice of the invention. This argument has been fully answered by the Board of Appeals in its decision. There, of course, is no dispute that Gibbons on behalf of Appellants made chain drafts from which chains were made which were introduced into looms and the set-up used for producing ladder web according to the issues herein. This was done on two occasions, namely, on or before March 10 and again on or before March 16, 1939. The Board of Appeals stated as follows:

> "After each of the parties had equipped their looms with chains so as to weave these ladder webbings in two colors they at once began to manufacture the webbing continuing the same up to the time of taking testimony." (Appellants App. p. 101)

This means that the Board held that manufacture on behalf of Appellants took place continually from March 10 and March 16, 1939.

But we need only look to the facts of record before this Court to find that Appellants were diligent before March 6,

1939. The testimony establishes the following pertinent facts:

1. Appellants reduced the invention to practice in England before January 27, 1939.

2. The invention was received in this country in New York City the first part of February 1939 by Harris and Miss Donovan.

3. Harris broke several ribs, which delayed his disclosure to Gibbons for a matter of three weeks, he having returned to his office in New York on February 24, 1939.

4. At the end of February 1939 Harris went to Fall River, Mass. and disclosed the invention to him about March 1, 1939, leaving a sample thereof with Gibbons.

5. Gibbons worked two or three nights to evolve the pattern of interweaving of the threads to reproduce the invention.

6. Gibbons reduced the invention to practice by making a ladder web in evidence here, not later than March 10, 1939.

7. Gibbons again reduced the invention to practice by making a special fancy ladder web called Dekratape not later than March 16, 1939, which tape is in evidence here.

8. This Dekratape was approved by a prospective customer on March 18, 1939.

9. Gibbons immediately set the mill to producing this ladder web commercially.

10. Such manufacture continued to the time of taking testimony in this case.

Conclusion.

The party French on behalf of Appellants undoubtedly made and introduced the invention to this country prior to the earliest date which could be awarded to Colby.

A patent on this subject matter could not be valid if issued in the name of Colby. The invention was made by French and had been introduced into this country prior to Colby's alleged dates of conception.

We have shown that any activity in making ladder web according to the present issues by Appellee International was due to a conception by Marshall and not of Colby. Colby is attempting to obtain a patent on someone else's invention. There is no evidence that Colby ever conceived the invention nor even that he had any knowledge of any work thereon by International. The earliest date which can be given to Colby would be the date of his application for patent which is not before this Court. The Board of Appeals stated as follows:

> "After the interference was declared the party French brought a motion to shift the burden of proof since he had filed in England on April 6, 1939, a provisional application. This motion was granted by the Primary Examiner, thus making the party Colby the junior party." (Appellants App. pp. 97-98)

There was no finding by the District Court to the contrary. In the Patent Office Appellant French was the senior party and there is no evidence in this case which would upset the presumption of prior invention by French.

There is nothing in the record to show any conception by Colby or a disclosure by him to others. Marshall's testimony denies any conception or disclosure by Colby and asserts instead conception by Marshall. However, this as far as the record shows is uncorroborated and is merely an assertion of a conception. There is no evidence in the record of any activity by International other than the alleged conception of Marshall. No diligence or reduction to practice has been proven on behalf of Colby or International.

From the date of receipt in this country of French's letter early in February 1939 until the several reductions to practice at or before the middle of March 1939, only a period of six weeks intervened. The evidence shows that the activity on behalf of French in this period was as continuous as was physically possible and there was every intention to push manufacture with the greatest possible speed.

In view of the above, it is believed that the District Court erred in holding that Colby was the first inventor and this Court is requested to reverse the District Court and to award priority of invention to Appellants.

Respectfully submitted,

H. C. Bierman,
Attorney for Appellants.

APPENDIX

IN THE

United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 8798.

GEORGE FREDERICK FRENCH, ET AL., *Appellants,*

v.

GEORGE E. COLBY, ET AL., *Appellees.*

Appeal from the District Court of the United States for the District of Columbia.

ADDITIONAL APPENDIX TO REPLY BRIEF FOR APPELLANTS.

Deposition of Charles W. Marshall

31 "Charles W. Marshall, a witness called on behalf of the party Colby, having been duly cautioned and sworn, on oath deposes and says as follows:

"Direct examination by Mr. Barlow:

"Q. 1. Will you please state your name, age, residence and occupation? A. Charles W. Marshall, 58 years old, 74 Whitman Avenue, Cranston, designer.

"Q. 2. And where are you employed? A. The Moore Fabric Company in Pawtucket.

"Q. 3. Were you at one time employed by the International Braid Company? A. Yes, sir.

"Q. 4. During what period were you employed by the International Braid Company? A. From the fall of 1936 until the fall of 1940.

"Q. 5. What was your work at the International Braid Company? A. Designer, constructionist, supervisor of weaving.

"Q. 6. During your employment at the International Braid Company, do you recall ever hearing of Duplex ladder web or ladder tape? A. Not previous to our making some samples in the weave room.

"Q. 7. You did make some samples? A. Right.

"Q. 8. I show you a framed layout and ask you if
32 you know what that is? A. That is a copy of the original draft of the Duplex venetian blind tape. It is a copy."

Mr. Barlow. I will show you what he saw there (indicating). Do you want to open that up?

The Deputy Clerk. Might as well.

Mr. Barlow. (Continuing reading:)

"Q. 9. What do you mean by 'a copy'? A. We first make an original working draft and then we make these from the original working draft.

"Q. 10. Have you looked to see if you can find the original draft? A. I have looked and I have found one.

"Q. 11. Have you got it here? A. Yes.

"Q. 12. May I see it, please? A. Yes, sir. (Witness hands document to counsel.) There is the original right there (indicates) and it is written on the back here by somebody—it might have been Mr. Colby."

Mr. Barlow. Well, he had a—(indicating).

The Court. All right.

Mr. Barlow. (Continuing reading:)

"Q. 13. Did you make the original? A. Yes, sir, I took it home and made it. I made a diagram of it first at home, and here is another one I made out at home too, which will

show the workings of it. (Witness hands document to counsel.)

"Q. 14. Is there a date on this first one? A. I think you will find the 7th marked on there.

"Mr. Barlow: I offer in evidence this dated strip of paper identified by the witness Marshall as Colby Exhibit 1."

33 The Court. That is Exhibit 3?

Mr. Barlow. That is Exhibit 3. I don't seem to find Exhibit 1 here.

That is Exhibit 1. (Handing exhibit to the Court.)

The Court. All right.

Mr. Barlow. We offer that in evidence.

The Court. Any objection?

Mr. Bierman. No objection.

The Court. That will be admitted.

The Deputy Clerk. You want that marked as Colby Exhibit No. 1?

Mr. Barlow. Colby Exhibit 1, yes. I believe that has already been marked.

The Deputy Clerk. I was wondering.

(After examining:) Yes, Colby's Exhibit 1.

(Original draft of Duplex Venetian Blind Tape, March 7, 1939, made by witness Charles W Marshall, having been heretofore marked Colby Exhibit 1, was received in evidence.)

Mr. Barlow. (Continuing reading:)

"Q. 15. And this second strip you have given me with a piece of ladder web stapled to it is one made out by you too? A. Yes, sir.

"Q. 16. What does that show? A. It shows the stitching in the block, as corresponding to the notation on the back here.

"Q. 17. And is that your writing on the back? A. That is my writing on the back.

"Q. 18. Is this one dated? A. Yes.

"Mr. Barlow: I offer in evidence the second strip
34 referred to by Mr. Marshall dated March 7, 1939, as Colby Exhibit 2."

Mr. Bierman. No objection.

The Court. That will be admitted.

(Original draft of Duplex Venetian Blind Tape showing stitching in block made by witness Charles W. Marshall, heretofore marked Colby Exhibit 2, was received in evidence.)

Mr. Barlow. (Continuing reading:)

"Q. 18a. What is this framed one? A. That is a copy of the chain draft.

"Q. 19. That is a copy of Exhibit 1, is it? A. Yes, sir.

"Q. 20. How did you come to make up a copy of the original draft? A. That got knocked around and got dirty and dilapidated and we made a copy so that we would have a clean job when we put it in other looms.

"Q. 21. When did you make the copy? A. I think Mr. Reynolds can tell you that. I think he had that made.

"Q. 22. Did you have anything to do with making up this framed copy that you speak of? A. Yes, that is my work in here (indicates) but he had it framed up.

"Mr. Barlow: I offer in evidence this framed copy as Colby Exhibit 3."

The Court. All right.

Mr. Bierman. No objection.

The Court. Let it be admitted.

(Framed copy of Colby Exhibit 1, heretofore marked Colby Exhibit 3, was received in evidence.)

35 Mr. Barlow: (Continuing reading:)

"Q. 23. Mr. Marshall, will you state how you came to make up the chain draft of Duplex ladder web? A. Since they put those new looms in there, when they first put them in, I was the only one that really worked on the chain drafts. Previous to that I had made previous samples. That is where I got the idea from.

Q. 24. Did Mr. Colby tell you what to make up? A. He said he wanted a two-color job. That is all he said to me, and with the information I had previous to that, I took it home that night and made out a draft, made out these drafts, and the next day I got it working.

Q. 25. Did he tell you that he wanted a two-color job so that the colors would not show through? A. As far as I know, he wanted a two-color job so that the color would not show.

Q. 26. Do you remember when he had that talk with you? A. As far as I know, it was around the 6th of March.

Q. 27. That was the day before you made up and dated these chain drafts? A. That same night I took them home and made them up. I dated them the 7th because we started to work on them in the shop on the 7th.

Q. 28. In what way did you start to work on them? A. The first idea I had was in this thing here (indicates). It says to make a two-colored web with solid colors, a different color on each side. That was an idea I had in 1938 (witness hands memorandum book to counsel), and the first idea I had was making solid blocks, and then from there I had the idea of making the two colors. You see, I was trying to make a solid block. That is the way they used to make them, and the color showed through and we wanted to eliminate that.

Q. 29. When you say "they wanted to make them", whom do you mean? A. I don't know. It seems to me—I don't know whether the French people made something like that or not. Anyway, that was the idea, to get away from this solid color here (indicates), this stitching showing here (indicates), so I tried to get a solid color on the face in blocks first and that led me to the idea of that (indicates).

I think that will tell you all that there.

Mr. Bierman: The witness refers to a notebook having pencil notations.

37 The witness: That first one refers to the block there but that one there is something else, on this side here (indicates).

Q. 30. This note you refer to says "Two-color web with solid colors different color on each side"? A. Yes, that is, that is a web of this nature here (indicates). One color here and one color here (indicates).

You will probably see it right here. There is solid color here and there is the other solid color here (indicates).

Mr. Bierman: The witness refers to a Duplex piece of tape lying on the desk.

Q. 31. After you got this chain draft made, what was the next step in the operation of producing the web? A. The next step was to have the chain built and our chain builder was Mr. Armfield at the time and he completed the chain and worked with me on putting it in.

Q. 32. Then what was the next step? A. The next step was to get the web off and submit it to Mr. Colby, or whoever was in charge.

Q. 33. Didn't you have to put in some warp yarns of different color than you were running before? A. Yes, I see your point there. We had to change from a solid piece of web, to make half the yarn one color and the other half another color, and in that way we had to put in half the set of warps that are required to work with.

Q. 34. What colors did you put in? A. We have a solid color like this (indicates) on both face and back and we had to change these warps here to another color in order to get the two colors.

Mr. Bierman: On both outer bands as well as on the cross tapes?

The Witness: Yes, the outer band and these straps in here (indicates).

38 Q. 35. Did you have girls draw in different colors?

A. The girls tied them in. It seems to me there were red, blue, and green.

Q. 36. The girls tied these in? A. Yes.

Q. 37. And the chain was put on? A. The chain was put on, the warps were pulled through and the filling was put in to correspond with the weaving of the tape on the bottom.

Q. 38. You would have to put in a colored filling? A. Right, to make a solid color.

Q. 39. To make a solid color? A. Yes.

Q. 40. In the outer tape? A. In the outer tape.

Q. 41. Here is a bunch of tapes, I will ask you if you know what they are? A. Yes, these are Duplex tapes, what we call a Duplex tape today. They were supposed to be made two colors.

Q. 42. Do you know when these were woven? A. I wouldn't swear when these were made, no. They look as if they might be the originals because we made them like this and then they went onto a linen back, and the filling was changed to make corresponding samples. They may have been originals or they may have been something on the starting up of a loom. I wouldn't swear to these as being the originals.

Q. 43. If they were the originals, when would these have been woven? A. These were woven in March, 1939.

Q. 44. Judging by the dates on these chain drafts, about what date in March would you say? A. This same time because it doesn't take long to weave samples of this nature.

Q. 45. You mean the same date, March 8th? A. March the 7th, I think it is.

Q. 46. Yes, March 7th, I should have said. If these are not the original, are they identical with the originals? A. They are similar, yes.

Q. 47. Do you know of any changes? A. There is one little correction that was made on the draft. That was due to little loose threads at the starting of one of the
39 blocks.

Q. 48. When was that correction made? A. I couldn't say to that.

Q. 49. Was it made within a day or two after that? A. No, it was not, but it was made within a few days afterward.

Q. 50. What was that correction, can you point it out? A. I think I can point it out on this sketch here.

Q. 51. That is Exhibit 2 that you are referring to? A. I had this stitching coming down here (indicates).

Q. 52. That is where the pencil line is? A. Yes, so I immediately moved it back to here (indicates) which made that a little tighter, because that is the next pick, and it lengthened out a little bit.

Q. 53. The correction that you refer to is already marked "Correction"? A. I marked it on here in pencil.

Q. 54. Yes, in the upper left-hand corner of this sheet, and it shows in pencil, whereas the line that previously was in there was in blue, and you can see just where the change took place? A. Yes, you can see the change there (indicates).

Q. 55. And you think that correction was made about when? A. I won't say now.

Q. 56. Do you think it was made within a week after this matter was commenced? A. I couldn't say. I won't say to anything I am not sure of.

Q. 57. Will you explain Exhibit 3, as to what the designations are in the upper portion in spaced positions? A. Yes. We have different lengths of ladder tape, probably French has the same thing down there too, different ladders for diffrent lengths between the straps.

These here refer to the bars that were taken out. These stars under E, X and A correspond to the bars which were taken out of the original chain.

Mr. Bierman: All these designations appear on the left side?

The Witness: On the left side.

40 "Mr. Bierman: Of the chain draft?

"The Witness: Of the chain draft.

"Q. 58. When held in vertical position with the word Duplex at the top? A. Because that eliminates a lot of time and labor, by taking a few bars out. Otherwise you have to build a chain for each style of tape.

"Q. 59. So on this one draft you have substitute arrangements for making up several chains? A. Right.

"Q. 60. How long before you got a full range of colors operating in the International Braid Company on Duplex tape? A. I wouldn't says as to that because we only put in about three colors when we first made it because we just wanted to limit the number of strips on the loom.

"Mr. Barlow: I introduce in evidence the tapes identified by Mr. Marshall as being either the originals or just like the originals."

Mr. Barlow. And ask that they be marked Colby Exhibit 4. (Indicating.)

* * * * * * * * * *

"Q. 61. Referring to the green colored tape, do you find that that tape was made identical with the layout of the chain draft shown in Exhibit 3? A. Yes, sir.

"Q. 62. And identical with the chain draft in Exhibit 2? A. Yes, sir.

"Q. 63. Does that tape that you have in your hand
42 with the green web on one side have two main webs or outer bandings? A. Right, these two here (indicates).

"Q. 64. One is colored— A. Natural, and the other is colored green.

"Q. 65. And are there cross tapes which are woven with warps and wefts? A. Cross tapes are woven with wefts, you say?

"Q. 66. Yes. A. These tapes here (indicates)?

* * * * * * * * * *

43 "Q. 67. Do the ladders have warps and wefts? A. Yes, the weft is the filler. You have also got filler on your outer tapes too. Your straps inside are woven with the filling, which is weft.

"Q. 68. And those inside straps are connected to the natural and green webs, are they? A. Yes, by alternate ends of the same color.

"Q. 69. And what are the colors in the cross straps? A. They are green and natural."

He is talking about the green one now, of course.

"Q. 70. And where do the natural webs connect? A. They connect with the bottom tape and they connect with the weft of the strap tapes.

"Q. 71. And when you say 'bottom tape', what do you mean, the white tape? A. I will distinguish that as the natural, in order to make it clear. It doesn't really matter much whether it is top or bottom but usually the natural would be the bottom.

"Q. 72. The bottom what? A. The bottom tape.

"Q. 73. And you call the ladders—A. The straps.

"Q. 74. The ones that have the green and the white? A. The ones that have the green and white warps.

"Q. 75. The straps? A. The straps, right.

"Q. 76. Are those straps arranged in two rows? A. The straps are arranged in two rows, that is right.

"Q. 77. And are they staggered? A. They are staggered, right."

* * * * * * * * * *

46 (Six tapes, bunched together, identified on deposition by witness Charles W. Marshall and heretofore marked Colby Exhibit 4, were received in evidence.)

The Court. Proceed with the evidence.

Mr. Barlow. Question 78 is the next:

47 Q. 78. And as to the white warps and the green warps in the straps, are those in alternate arrangement? A. Yes, every other warp alternate.

Q. 79. And those are interwoven— A. With the strap filling or weft, if you want to call it that.

Q. 80. The weft filling of the outer webs or bandings? A. Will you repeat that again, please? (Question read as follows: "Those are interwoven with the weft filling of the

outer webs or bandings?") A. The strap filling does not weave with the outer banding.

Q. 81. How does it connect to it? A. It lays in between and it is connected by the colored threads weaving into the upper plane or the green strap.

Q. 82. And how are the white warps arranged in the location of the connection of the strap to the green tape? A. The natural threads are not woven with the filling of the upper tape. In other words, the strap filling weaves with the natural threads.

Q. 83. So that these white ones— A. These white ones do not weave in the tape at all.

Q. 84. They extend over the inner surface of the green? A. That is right.

Q. 85. Without interlocking with the wefts of the green? A. That is right, because if they entered into that upper plane there, they would show on the face of the web, and that is what we were trying to avoid. That is the idea of the patent.

Q. 86. And when you are finished do you have an integral woven ladder construction? A. Yes.

Q. 87. For how long a period did you make this Duplex tape after you commenced making it? A. We started looming up shortly after we ran one loom, or pretty near —that was 1939. In fact, they are running it today, if I understand right.

Q. 88. Did they run it all the time that you were there? A. No, on and off.

48 "Q. 89. On and off? A. Yes, because there were times that we didn't have it in.

"Q. 90. You never dropped the construction? A. Oh, no, no; we never dropped it because it has been made continuously in that respect.

"Q. 91. Wehn you got enough stock ahead you did not make it any more? A. Right."

Mr. Barlow. That is the end of the deposition.

This is cross-examination by Mr. Bierman.

The Court. I want Mr. Bierman to read his cross-examination.

Mr. Bierman. (Reading cross-examination:)

"XQ. 92. I understand that you were working with this Duplex ladder web prior to March, 1939? A. Right.

"XQ. 93. All that work was done on your own initiative without instructions from anybody? A. Without instructions from anybody, and as I showed you, this block here was the first idea I was working on.

"XQ. 94. You made this block yourself? A. I made that block myself, yes, made it on the sample loom with Mr. Richards' help on building chains, but there did not seem to be possibility enough, so I held that in abeyance, and then there wasn't really any go ahead to it, in a way, so I just simply let them lie. Another idea I had at the same time was the printing idea, the printing of ladder tapes.

"XQ. 95. You have handed me two samples of ladder web wherein both outer bands are of the same color and on one of the outer bands there has been painted or
49 crayoned a certain design? A. That is right.

"XQ. 96. This was intended by you to make a Duplex type of ladder web? A. That was another idea. It will probably tell you right here (indicates).

"XQ. 97. That is, this idea is to be found in the notebook to which you have previously referred? A. That is right.

"XQ. 98. And the description of it is in your own handwriting? A. That is right. I showed it to the powers to be but they did not seem to be interested to bother
50 with it so I dropped it and let it lay awhile until they brought it up again.

XQ. 99. Who are "the powers to be"? A. That is Mr. Colby but he didn't seem to think the idea was worth anything, so I just stopped making those ideas, that was all. I think it explains on the back there.

XQ. 100. I call your attention to Exhibit 1, which is the chain draft made by you; on the back I notice the word "Duplex CWM"; is that in your handwriting? A. That is in my handwriting, right.

XQ. 101. Then to the right of this notation I see some more wording "Original Duplex chain draft made March 7, 1939; copied March 22, 1940"; is that in your handwriting? A. No.

XQ. 102. Do you know who wrote this? A. I think Mr. Colby wrote that. He can probably tell you his own handwriting better than I can.

XQ. 103. On the left-hand side of the back of this chain draft I see the words "March 7, 1939, C. W. Marshall"; in whose handwriting is that? A. Mine.

XQ. 104. You stated that you yourself worked out the details of this chain draft? A. All of it.

XQ. 105. You received no instructions from Mr. Colby as to how you were to work that out? A. No; he left it all to me in charge. He said I knew more about it than he did and he left it in my charge so that it was up to me to go ahead and get something for him.

XQ. 106. He simply gave you the idea that he wanted a Duplex tape in which the specks of color did not show through on the outer bands? A. Right.

XQ. 107. I call you attention to Colby Exhibit 2, which is the stitching draft or chart; there is writing on the front and on the back; in whose handwriting is all this? A. That is all mine.

XQ. 108. Is there any indication as to when you made those notations? A. I made them at the same time as the date.

51 XQ. 109. In other words, all the writing on this draft, both front and back, was made on March 7, 1939, or perhaps the night before? A. The night before, because I worked on it at night at home.

XQ. 110. Did Mr. Colby give you any instructions as to this stitching draft or chart? A. No.

XQ. 111. All of the details were devised by yourself alone? A. That is right.

XQ. 112. You stated that you had Mr. Armfield make the chain draft? A. Make the chain.

XQ. 113. Excuse me—that was done on your instructions? A. Right.

XQ. 114. Did you supervise the work? A. I did, yes, the original, I supervised the whole thing.

XQ. 115. As far as you know, ladder web was made from a loom equipped with this chain that Mr. Armfield made? A. Right.

XQ. 116. Under whose supervision was the ladder web made? A. It was really up to me to see that it got out.

XQ. 117. I am speaking for the first samples that were made. A. I was the one that got the first samples out.

XQ. 118. Who did this work? A. I don't know what particular weaver it was that ran it at the time. I was put in the regular loom.

XQ. 119. But it was under your instructions that it was done? A. Yes.

XQ. 120. I don't believe that you have clearly set forth what you mean by "Duplex tape"; is that a tape wherein each of the outer bands is of a different color and the cross straps are of the two colors of the outer bands? A. That is right. I don't know whether this would explain it to you or not. "One set of ends in strap same color as bottom fabric enters the same plane as the bottom fabric to stitch together".

XQ. 121. You testified as to the green Duplex tape of Exhibit 4; will you tell me whether that piece of tape
52 embodied the correction which is noted on your stitching chart, Colby Exhibit 2? A. Yes, I should say that has the correction made on this tape here.

"XQ. 122. You don't know when that correction was made? A. No, not to be certain.

"(Cross examination closed.)

"(Deposition closed.)"

* * * * * * * * * *

Excerpt from Plaintiffs' Exhibit No. 50.

Application for United States Patent.

Petition with Power of Attorney.

To the Commissioner of Patents:

Your petitioner, George Frederick French, a subject of The King of Great Britain, and resident of Manchester, England, whose Post-Office address, Chester Road Mills, Chester Road, Hulme, Manchester, 15, England, prays that Letters Patent may be granted to him for Improvements in Ladder Webbing, as set forth in the annexed specification.

And he hereby appoints Walter Gunn (Registered Attorney No. 2013) of 55, Market Street, Manchester, England, his Attorney with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to sign the drawings, to receive the Patent, and to transact all business in the Patent Office connected therewith.

Signed at Manchester, England, this 16th day of June, 1939.

GEO. F. FRENCH.

Specification.

(As amended)

To all Whom it May Concern:

Be it known that George Frederick French, a subject of The King of Great Britain, residing at Manchester, England, has invented new and useful Improvements in Ladder Webbing, of which the following is a specification:

This Invention relates to ladder webbing and its manufacture, which webbing consists of two outer webs or bands (hereinafter referred to as bandings) having between them one or more rows of cross-straps, the ends of the cross-straps being connected to the respective bandings, by weav-

ing. Sometimes the cross-straps are woven and sometimes not.

It is sometimes required, as for instance in venetian blind webbing, that ladder webbing shall have the outer bandings of different colours, that is to say, having one banding of one colour, say A, and the other banding of another colour, say B. Hitherto, in fulfilling such requirement, it has been usual to make the cross-straps of one only of the two colours, (either A or B), but in doing so it has been found that where the ends of the cross-straps have been interwoven with the banding of the different colour, for instance, where the strap threads of the colour A are woven to a banding of colour B, specks or spots appear, usually irregularly, in the outer surface of such banding, due to the presence, in that surface, of parts of the cross-strap warp threads of another colour. A similar defect would occur, to a less extent, where in a webbing woven in known manner, a banding is itself of two colours (as for instance in a striped banding) and where the strap warps as they intermingle with the banding warps, at the binding-in, are of different colour to the adjacent banding warps.

Again, were a webbing to be woven in known manner with both bandings of the same colour and with some of the strap warps of another colour, the same defect would occur, i. e. specks or spots of that other colour would appear in the outer surface of the banding at the bindings-in of the cross-straps.

The Object of This Invention is to provide a method of weaving ladder webbing which eliminates the said defect, and by which it is possible to have the outer bandings of different colours (whether each is of a simple colour or not); or of the same colour and with some strap warps of another colour; without specks or spots appearing in the outer surface of a banding. In other words, the invention contemplates any ladder webbing in which the cross-straps have stripes of a different colour from a banding, which do no appear in the outer surface of that banding.

According to the Invention, at the connection of a cross-strap with a banding, some of the strap warps are lifted into the banding so as to appear in the outer surface thereof, whilst the others are held to the inner surface thereof.

As applied to a webbing having woven cross-straps and having one banding of one colour and the other banding of another colour (which is its principal application as at present contemplated) the invention is characterized in that the strap warps are some of the one colour and some of the other colour, and in that, at a binding-in, those strap warps of the same colour as the banding are lifted into the banding and bound therein by the banding weft, whilst those strap warps of the other colour are caused to form a shed on the inner surface of the banding and are bound thereto by the strap weft.

The result of this arrangement is that, those warp threads of a cross-strap which are in the outer surface of a banding, being of the same colour as that banding, are not noticeable by any contrast of colour.

The cross-strap when woven will be woven with or by a weft separate from those used in the bandings, and at the bindings-in such weft will engage only those strap warps which are not lifted into the banding.

In Preferred Embodiments of the invention, the warp threads of the cross-straps alternate in color; that is to say, alternate warp threads of a strap are of the colour of one banding, whilst the intermediate warp threads of the strap are of the colour of the other banding; and in the binding-in of the cross-straps with the bandings, the alternate strap warp threads say of colour A, are shedded into the banding of colour A, whilst the intermediate strap warp threads of colour B are bound against such banding A; and on the other hand, the intermediate strap warp threads of colour B are shedded into the banding of colour B, whilst the alternate strap warp threads of colour A are bound against such banding B; all the strap-warps being themselves woven together by a strap weft, which may be the same in colour as one of the bandings.

In an Example of the Invention, the improved webbing is made in a tappet or dobby loom, tappets being arranged for the weaving of a herring-bone or like pattern in the bandings, in known manner. There are two rows of woven cross-straps, in staggered relationship as in known manner, and the loom mechanism is arranged so that, during the connection of a strap to a banding, those strap warps of the same colour as the banding are lifted in the banding to be caught by the banding weft, the remainder being woven with the strap weft only.

The webbing, in this example, is made on a four-shuttle loom having a separate shuttle for each banding and a further separate shuttle for each row of cross-straps.

When the cross-straps are to be weftless, the shedding of the strap warps would cease between successive bindings-in, and the strap weft would "float" for the length of the unwoven strap.

In Another Example of the Invention, the bandings are made tubular either at the bindings-in only, or for the full width of the banding; and, at any one binding-in, those strap warps of the same colour as a banding are lifted into and woven into the outer wall of ply of the tube, whereas those strap warps not of the same colour as the banding are woven into the inner wall or ply of the tube. When the full width of the banding is tubular, the banding could be in the form of a two-ply fabric with the two plies bound together.

The invention may be incorporated in webbing made according to my earlier Patent No. 2141038, having long bindings-in, in which case the strap warps of a different colour from a banding would be those superimposed on the banding; as distinct from being woven into the banding by the banding weft.

The Invention will now be described with the aid of the accompanying drawing, wherein:

Fig. 1 is a longitudinal section of a short length of ladder webbing with woven cross-straps, embodying the invention, the webbing being shown prior to the snipping of the warps

between adjacent bindings-in, but with the bandings separated to an exaggerated extent for the sake of clearness.

Fig. 2 is a broken transverse section of the upper banding shown in Fig. 1.

Fig. 3 is a diagrammatic cross-section of one banding of a ladder web illustrating how the banding can be formed tubular in the plane of the cross straps.

Fig. 4 is a longitudinal section through the binding-in portion of a banding in which only one shuttle is used, this representing a specimen of ladder webbing according to the invention woven with two shuttles only, one for each banding.

a is one outer banding and *b* the other outer banding of the webbing, each composed as usual of warp and weft. *c, d* are the warps of one row of cross-straps. The warps *c* are of one colour, say red, and the warps *d* of another colour, say blue. Assuming the banding *a* is red, then only the red strap warps *c* will be interwoven with banding *a*, whilst the blue strap warps *d* will merely lie against the inner face of the banding *a* and be held thereto by the weft *e* of the cross-strap. Assuming the banding *b* is blue, then only the blue strap warps *d* will be interwoven with banding *b*, whilst the red strap warps *c* will merely lie against the inner face of the banding *b* and be held thereto by the strap weft *e*.

Usually each banding will be of one colour throughout, but it may be in more than one colour, i.e. warps of one colour and weft of another and the cross-strap warps bound into such banding agreeing with one only of the banding colours, and together giving a floral or ornamental pattern.

Referring to Fig. 3, the banding *a* is made of tubular form in the lines of the cross-straps and each such part has an outer wall *f* and an inner wall *g*. In some examples of the invention having this characteristic, all the strap warps may be woven into the inner wall *g* of the tube, or if desired, some only will be woven into such inner wall, the remainder being woven into the outer wall *f*. The first alternative is illustrated on the left hand side of Fig. 3, whilst

the second alternative is illustrated on the right hand side of that figure. In the first alternative, the strap warps may be of any colour since in no case does any of them appear in the outer surface of the banding, whilst in the second alternative, those strap warps which are woven into the outer wall of the tube will be of the same colour as the banding, the others being of any other desired colour, for example, the colour of the other banding.

Referring to Fig. 4, the banding warps *h* are woven together by the banding weft *i*, and the strap warps are divided into two groups *j* and *k*, those in the group *j* being the same colour as the banding warps *h* and those in the group *k* being of another colour. In the shedding of the strap warps during the binding-in, those in the group *j* are substantially on the outer face of the banding, being, as shown, up three picks and down one, whilst those in the group *k* are substantially on the inner face of the banding being up one pick and down three. With this arrangement as will be seen at *x*, wherever a strap warp of one colour appears in the outer face of the banding of another colour, there are two strap warps of that other colour to cover it.

When the banding is made as a two-play fabric, or tubular, for its full width, all the cross-strap warps may be woven into the inner ply or wall and therefore be of any colour, or some only will be woven into the inner wall and the others be lifted into the outer wall or ply, in which last case those lifted into the outer wall or ply will be of the same colour as such wall.

The invention is also applicable to ladder webbing made according to the invention forming the subject of my prior Patent No. 2141038, or according to the inventions forming the subject of my prior Applications #203584 and 272,763. In all cases where the warps of the cross-straps are in two colours, those of one colour will be interwoven with the banding of corresponding colour, and those of the other colour only bound to the inner face of the same banding.

What I claim is:

1. Integrally woven Ladder Webbing composed of two outer bandings connected joined by woven cross-straps, wherein the outer bandings are of different colours, and wherein one half of the cross-strap warps are of one colour agreeing with the colour of one banding, and the other half are of another colour agreeing with the colour of the other banding, and wherein at a binding-in of a strap to a banding, the strap warps of like colour to the banding are interwoven with such banding, whilst the other strap warps are only bound to the inner face of the banding, no portion of the cross-strap warps of one colour showing through the banding of the other colour.

2. Ladder Webbing composed of two outer bandings, joined by woven cross-straps in two rows, those straps in one row lying in staggered relationship to those in the other row; wherein the outer bandings are different in colour; wherein the cross-straps contain warps of both such colours; and wherein the strap warps of each colour are bound into the banding of corresponding colour by the banding weft, but are merely bound to the inner face of the banding of different colour by the cross-strap weft.

3. Ladder Webbing composed of two outer bandings joined by a single row of woven cross-straps between them wherein the outer bandings are different in colour; wherein the cross-straps contain warps of both such colours; and wherein the strap warps of each colour are bound into the banding of corresponding colour by the banding weft, but are merely bound to the inner face of the banding of different colour by the cross-strap weft.

4. Ladder Webbing composed of two outer bandings connected by cross-straps, and each banding being of more than one colour, wherein the cross-straps are composed of warps of different colours, agreeing respectively with those of the bandings, and wherein at a binding-in those strap warp threads of one colour are interwoven with a banding possessing the same colour, and those strap warp threads of

the other colour are merely laid against and bound to the inner face of the same banding.

5. Ladder Webbing composed of two outer bandings joined by cross-straps between them wherein at a binding-in of a cross-strap to a banding, the strap warps are divided into two groups, those of one group having been lifted into the banding and woven therein by the banding weft, and those of the other group merely having been held against the inner face of the banding by a strap weft.

6. Ladder Webbing according to claim 5 wherein the strap warps of one group are different in colour from those of the other group and wherein those of each group are the same in colour as the banding into which they are lifted.

7. Ladder Webbing wherein at the connection of a cross-strap with a banding, some of the strap warps are lifted into the banding so as to appear in the outer surface thereof, whilst the others are held to the inner surface thereof.

8. Ladder Webbing composed of two outer bandings joined by cross-straps between them, wherein some of the cross-strap warps are of the same colour as a banding and others are of a different colour; wherein at a binding-in of a strap with a banding the banding is woven tubular, and wherein those strap warps of the same colour as the banding are woven into the outer wall of the tube whilst those of the other colour are woven into the inner wall of the tube.

9. Ladder Webbing according to claim 1 wherein the bindings-in of each strap extend at least to the next strap in the same row.

10. Ladder Webbing composed of two outer bandings joined together by cross-straps between them, wherein at least one of the bandings is a two-ply fabric and wherein the cross-straps contain warp threads of the colour of the outer ply, lifted into and woven in such outer ply, and other warp threads woven into the inner ply only.

11. Ladder Webbing composed of two outer bandings joined by cross-straps between them, wherein some of the

cross-strap warps are of the same colour as a banding and others are of a different colour; wherein the strap threads at a binding-in are woven to tubular form, and wherein the outer wall or ply of the tube is woven into the banding by the banding weft.

12. Ladder Webbing composed of two outer bandings joined by cross-straps between them wherein at least one of the bandings is a two-ply fabric and wherein the cross-strap warps are woven into the inner ply only.

13. Ladder Webbing composed of two outer bandings joined together by cross-straps between them, wherein at least one of the bandings is tubular across its whole width and wherein the cross-strap warps are woven into the inner wall of the tube only.

14. Ladder Webbing composed of two outer bandings joined together by cross-straps between them, wherein the bandings are of tubular form at the bindings-in and the cross-strap warps are woven into the inner wall of the tube only.

15. An integrally woven ladder construction consisting of two main webs having exterior faces of differing color characteristics, connected at their interior faces by cross members having color characteristics which include the color characteristics of both of the main webs as a result of the cross members being constructed of warps part of which possess the color characteristics of one main web and which are interwoven into only that main web, and the other part of which possess the color characteristic of the opposite main web and which are interwoven into only said opposite main web, whereby each main web is free on its exterior surface from the color characteristic of the opposite main web.

16. An integrally woven ladder construction consisting of two main webs having exterior faces of differing color characteristics, connected at their interior faces by cross tapes having color characteristics which include the color characteristics of both of the outer webs as a result of the

cross tapes being constructed of wefts and of warps part of which possess the color characteristics of one main web and which are interwoven into only that main web, and the other part of which possess the color characteristic of the opposite main web and which are interwoven into only said opposite main web, whereby each main web is free on its exterior surface from the color characteristics of the opposite main web.

17. An integrally woven ladder construction consisting of two main webs having exterior faces of differing color characteristics, connected at their interior faces by cross tapes having color characteristics which include the color characteristics of both of the outer webs as a result of the cross tapes being constructed of wefts and of warps part of which possess the color characteristics of one main web and which are interwoven into only that main web, and the other part of which possess the color characteristic of the opposite main web and which are interwoven into only said opposite main web, while the warps which possess the unlike color characteristics of the main web extend over and adjacent to the inner surface of that main web, whereby each main tape is free on its exterior surface from the color characteristic of the opposite main web.

18. Ladder webbing composed of two outer bandings, joined by woven cross-straps in two rows, those straps in one row lying in staggered relationship to those in the other row; wherein the outer bandings are different in colour; wherein the cross-straps contain warps of both such colours; and wherein the strap warps of each colour alternate and are bound into the banding of corresponding colour by the banding weft, but are merely bound to the inner face of the banding of different colour by the cross-strap weft.

In testimony whereof I have signed my name to this specification.

GEO. F. FRENCH.

Oath.

Great Britain and N. Ireland, County of Lancaster, City of Manchester, ss:

George Frederick French, the above named petitioner, being duly sworn deposes and says that he is a subject of The King of Great Britain, and resident of Manchester, England, that he verily believes to be the original, first, and sole inventor of the Improvements in Ladder Webbing, described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by his or his representatives or assigns in any country foreign to the United States, except as follows: Great Britain, Application No. 10725, filed on the 6th April, 1939.

GEO. F. FRENCH.

Sworn to and subscribed before me, this 16th day of June, 1939.

GEORGE TAIT,
Consul of the United States of America,
Manchester, England.

(American Foreign Service, $2.00 Fee Stamp.)

Fee $2.00. Service No. 2037.